

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

75-7450

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

DAILY MIRROR, INC.,



Plaintiff-Appellant,

vs.

NEW YORK NEWS, INC., HARRY (HENRY) GARFINKLE,
UNION NEWS CO., INC., AMERICAN NEWS CO., INC.,
and ANCORP, INC.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern
District of New York

SUPPLEMENTAL APPENDIX

(Sometimes referred to in Brief as STA)

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Co., Inc., and Ancorp, Inc.

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LETTER FROM EUGENE FREDERICK ROTH TO HONORABLE ROBERT
L. CARTER DATED AUGUST 7, 1973

lsa

AUG 9 1973

EUGENE FREDERICK ROTH
230 PARK AVENUE
NEW YORK, N.Y. 10017

EUGENE FREDERICK ROTH
STANLEY M. DORMAN

TELEPHONE 5
(212) MU 8-8030
CABLE: MOTH LAW, N.Y.

August 7, 1973

The Honorable Robert L. Carter
United States District Judge
Southern District of New York
United States Court House
Foley Square
New York, New York

Re: Daily Mirror, Inc. vs.
New York News, Inc., et al
File No. 71 Civ. 1221(RLC)

Dear Sir:

I am taking the liberty of replying by prompt letter to the affidavit of Robert W. Farrell, attorney for the plaintiff in the above matter, sworn to August 2, 1973 submitted on the motion pending before Your Honor to dismiss this case.

Mr. Farrell's affidavit states that I have "never served any papers on the plaintiff since the inception of this suit". This statement is unqualifiedly untrue. The file will show that I filed an answer on behalf of the defendants other than the New York News, Inc. on April 12, 1971 after due service on the attorney of record.

With reference to Mr. Farrell's statement that he has received no communications from me, it appears that his substitution as attorney is dated June 29, 1973.

Respectfully yours,

Eugene Frederick Roth

EFR:lal

LETTER FROM ROBERT W. FARRELL TO HONORABLE ROBERT L.
CARTER DATED AUGUST 8, 1973

2sa

AUG 10 1973

ROBERT W. FARRELL

ATTORNEY AT LAW

67 PARK AVENUE
NEW YORK, N. Y. 10018

August 8th, 1973

The Honorable Robert L. Carter
United States District Judge
Southern District of New York
United States Court House
Foley Square
New York, New York 10013

Re: Daily Mirror Inc. vs.
New York News, Inc.,
et al. 71 Civ. 1211 (RUC)

Dear Sir:

A letter mailed to you, with a copy to me
from the office of Eugene Frederick Roth pertaining
to the above titled matter requires this reply.

In my affidavit dated August 3rd, 1973 I
stated that Mr. Roth had never served any papers in
this matter. My reference was towards all matters in-
cluding any motions. I did not refer to the fact that
an answer by his office was served and was turned over
to me by Vincent Debo Esq. the attorney of record at
the inception of this matter.

Very truly yours,

Robert W. Farrell
Robert W. Farrell

rwf/ms

cc: Eugene Frederick Roth Esq. 230 Park Avenue NYC 10017
cc: Townley, Updike, Carter & Rogers Esqs.
220 East 42nd Street, New York, N.Y.

LETTER FROM ROBERT W. FARRELL TO HONORABLE ROBERT L. CARTER DATED AUGUST 13, 1973

35a

AUG 15 1973

ROBERT W. FARRELL

ATTORNEY AT LAW

67 PARK AVENUE
NEW YORK, N.Y. 10016

August 13th, 1973

The Honorable Robert L. Carter
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y.

Re: Daily Mirror, Inc., vs.
New York News, Inc., et al.
71 CIV 1211 (RCL)

Dear Sir:

Eugene Frederick Roth, attorney for all of the defendants excepting the New York News, INC., telephoned my office to inquire about the examination before trial for his clients, presently set for August 20th, 1973.

I agreed that he could have a 20 day adjournment and he was to mail a stipulation to that effect, which I have not as yet received, however I am advising the Court of that adjournment.

Sincerely yours,

Robert W. Farrell
Robert W. Farrell
212-787-7001

cc: Eugene Frederick Roth Esq.
230 Park Avenue
New York City, N.Y.

LETTER FROM TOWNLEY, UPDIKE, CARTER & RODGERS TO ROBERT

4sa

W. FARRELL DATED AUGUST 17, 1973

SEP

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

August 17, 1973

JAMES W. RODGERS
JOHN P. SCHNEIDER, JR.
THOMAS F. EDELMAN
JOHN J. MACONIA
EDWARD M. HAYES
WILLIAM B. HUNTER, JR.
ANDREW E. HUGHES
ROBERT F. PARKS
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JOHN M. CALLAGY
DOUGLAS G. FAIRHURST
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SPENCER C. HUNT
JOSEPH F. KELLY, JR.
RICHARD C. KULLEN, JR.
JAMES A. LEADER
TERENCE J. LYNCH
JEFFERSON MURPHY
WILLIAM J. THOM
ROGER E. WILLIAM

IRIS MURRAY H
CABLE SU
TELEPHONE

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York 10016

Re: Daily Mirror, Inc. v. Andorp,
Inc. et al.; 71 Civ. 1211 (RLC)

Dear Mr. Farrell:

As you know, the Court on Wednesday denied our pending motion without prejudice to renewal. This ruling brings on your deposition of The News on September 4th under our stipulation.

As the depositions of the remaining defendants have been adjourned to September 10th, we would prefer that all depositions be held on that date. Accordingly, a stipulation adjourning our deposition to the 10th is enclosed herewith. Mr. Jack E. Underwood, Vice President and Director of Sales for The News is most familiar with the facts and occurrences at issue and we will produce him on the 10th.

We would prefer that this firm's offices be used for the Underwood deposition (or all depositions if you wish) and that the first deposition begin at 10:00 A.M. Please advise if these changes are acceptable as I understand from Mr. Roth's office that 10:00 A.M. at our offices would also be convenient for his purposes.

If this stipulation meets with your approval, please sign and return the original and one copy to this

5sa

Robert W. Farrell, Esq.

-2-

August 17, 1973

office. I have left instructions that the originals should be filed with the Court as I will be on vacation from August 19th until September 5th.

Thank you for your assistance.

Very truly yours,

TOWNLEY, URDIKE, CARTER & RODGERS

By

John D. Canon

JDC:mab
Enclosure

cc: Eugene F. Roth, Esq.

LETTER FROM ROBERT W. FARRELL TO TOWNLEY, UPDIKE, CARTER
& RODGERS DATED SEPTEMBER 5, 1973

6sa

ROBERT W. FARRELL

ATTORNEY AT LAW

67

100-1 PARK AVENUE

NEW YORK, N.Y. 10022

September 5th, 1973

Townley, Updike, Carter, & Rogers Esqs
220 East 42nd Street
New York City, N.Y. 10017

Att: John D. Canonis Esq.
Dear Sirs:

Re: Daily Mirror
INC./N.Y. News, INC.
et al

This will confirm the relevant substance of our meeting today at your office, covering your letter of August 17th, 1973.

It has been agreed now, that the examination of witnesses will take place at the Federal Courthouse at 3:PM on September 10th, 1973, to be continued as necessary at the convenience of the parties. Obviously all other depositions would have to wait until such time as mutually arranged.

We also agreed that the examination as a report of Mr. Underwood would not be prejudicial to our demands for examination of the President of the New York News, Inc., who we claim to be Mr. Flynn or any other executive of the New York News, Inc.

We have accepted Mr. Underwood on your assurance that he knows the facts in the case and in the interest of expedition, since you stated that Mr. Underwood was leaving the country for a period of time.

CC: Eugene P. Sadey, Jr., Esq.
100-1 Park Avenue
New York, N.Y.

Signed
W. Farrell

LETTER FROM ROBERT W. FARRELL TO EUGENE FREDRICK ROTH
DATED SEPTEMBER 6, 1973

7sa

September 6th, 1973

Eugene Frederick Roth Esq.
200 Park Avenue
New York City, N.Y. 10017

Re: Daily Mirror Inc.,
Henry Garfinkle

Dear Mr. Roth:

This will confirm our telephone conversation of today wherein you advised me that you were going to be on trial in the State of Florida for about one month.

In view of this and pursuant to our stipulation of conducting plaintiff's examination before trial of your client, defendants, Henry Garfinkle, American News Company, Inc., Union News Company, Inc., Ancorp, Inc. it has been agreed as per your request that such examinations be adjourned to October 11th, 1973.

Signed stipulations with the above changes made are enclosed herein. I shall expect your covering letter for the requested adjournment as per your promise.

Sincerely,

Robert W. Farrell

LETTER FROM EUGENE FREDERICK ROTH TO ROBERT W. FARRELL
DATED SEPTEMBER 6, 1973

8sa

LAW OFFICES OF

EUGENE FREDERICK ROTH

230 PARK AVENUE

NEW YORK, N.Y. 10017

EUGENE FREDERICK ROTH
STANLEY M. DITTMAN

September 6, 1973

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York

Dear Mr. Farrell:

This will confirm my request to you
for the postponement of taking the deposition
of Mr. Henry Garfinkle until October 11, 1973
at 2:30 PM.

This request is made because of an
extensive trial in the Circuit Court of the
Fifteenth Judicial Circuit of Palm Beach County,
Florida, Index No. 70 C 2070, entitled Deborah
Light Perry, et al vs. Ann R. Light, et al, and
which I am required to try and which is expected
to take several weeks ending about October 7, 1973.

With appreciation for your courtesies,

Very truly yours,

EFR:lal

LETTER FROM ROBERT W. FARRELL TO HONORABLE ROBERT L. CARTER
DATED SEPTEMBER 10, 1973

9sa

SEP 12 1973

ROBERT W. FARRELL

ATTORNEY AT LAW

67 PARK AVENUE
NEW YORK, N.Y. 10018

September 10th, 1973

Hon. Robert L. Carter
United States District Judge
Southern District of New York
Foley Square
New York, New York 10013

Re: Daily Mirror Inc. v New York
News, Inc. et al., 71 Civ. 1211 (RLC)

Dear Judge Carter:

Pursuant to stipulations exchanged between the attorneys in the above titled matter, examination before trial was started today September 10th, 1973 of one of the parties of the New York News, Inc.

This examination was not concluded due to the necessity of said Mr. Underwood who was being examined to make a business trip to California.

The attorney for the "News" in fixing a date for the continuation stated his desire that we hold in abeyance any further examination of his clients until we conclude our examination against all the other defendants, being represented by Eugene Frederick Roth.

I am enclosing herewith a stipulation and a letter from Mr. Roth requesting that the examination of his clients be put over to October 11th, 1973 due to his being on trial in Florida.

We requested that a date be set for the continuation of examination of Mr. Underwood (News) and we were advised that Mr. Andrew L. Hughes of Townley, Updike, Carter and Rogers Esqs. would advise us by letter or telephone as to what that date will be.

I will proceed to continue these examinations as expeditiously possible with the cooperation of the defendant's counsel.

Very truly yours
Robert W. Farrell
Robert W. Farrell

CC: Townley, Updike, Carter
& Rogers Esqs.
220 East 42nd St., N.Y.C.
Eugene Frederick Roth Esq.

MAR 6 1974

LETTER FROM JEFFERY A. SHUMAN TO HONORABLE ROBERT L. CARTER
DATED MARCH 1, 1974 WITH RESTRAINING ORDER ATTACHED

10sa



Ancorp National Services, Inc.

131 VARICK STREET, NEW YORK, N. Y. 10013 • 212 • 255-5100

March 1, 1974

Hon. Robert L. Carter
U. S. District Court for the
Southern District of New York
Foley Square
New York, N. Y.

RE: DAILY MIRROR vs
ANCORP NATIONAL SERVICES, INC. et al.

Dear Judge Carter:

I, first, would like to apologize to you for not attending the pre-trial conference which you held in the above-captioned matter on February 28th. I understand from your Law Secretary, Mr. McCullough that only the Daily News was represented, as Mr. Farrell, the attorney for the plaintiff, failed to notify the other parties and himself was not present.

I have enclosed a copy of a Stay which is presently in effect enjoining any and all suits from being brought against the defendants, Ancorp National Services, The American News Company and the Union News Company. I have informed the plaintiff of this and had also informed Judge Owens.

If it is convenient for your Honor, and you so desire, I would be most amenable to a meeting to discuss this Stay and any related problems.

Thank you for your kind attention to this matter, I remain

Respectfully yours

Jeffrey A. Shuman
Counsel to Ancorp National Services, Inc.

cc Mr. John Canoni
cc Mr. Barrett Kreisberg
cc Mr. Farrell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11sa

In the Matter

-of-

ANCORP NATIONAL SERVICES, INC.,

Debtor.

In Proceedings For
An Arrangement
No. 73-B-221

RESTRaining ORDER

At New York, New York, in said Dis-
trict, on the 20th day of March, 1973,

Upon the annexed application of the above named debtor,
dated the 19th day of March, 1973, and it appearing
that no notice need be given, and sufficient cause having been
shown therefor, and no adverse interest having been represented,
it is

ORDERED, that any and all persons be and they hereby are
stayed, restrained and enjoined from proceeding in any Court
wherein the above named debtor is a defendant until final decree
in the above entitled proceedings, or until further order of
this Court; and it is further

ORDERED, that all persons, firms and corporations, includ-
ing all creditors of the above named debtor and the representa-
tives, agents, attorneys and servants of all such creditors, and
all sheriffs, marshals and other officers and their deputies,

representatives and servants, are hereby jointly and severally enjoined and stayed from removing, transferring, disposing of, or attempting in any way to remove, transfer, or dispose of, or in any way interfere with any property, assets or effects in the possession of or owned by the above named debtor, and in the possession of any officers, agents, attorneys or representatives of said debtor; and all said persons are further enjoined, stayed and restrained from executing, issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, replevin, execution or any other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of said debtor, or its agents, servants, or attorneys; and each and all of said persons, firms and corporations having process against the said debtor are hereby jointly and severally restrained, stayed and enjoined from taking any steps, measures, or proceedings, or doing any act or thing in any action wherein the said debtor may be either plaintiff, defendant, petitioner or respondent, and from causing, procuring, suffering, or permitting the same to be done, until further order of this Court, except that the provisions herein shall not apply to a suit to enforce a lien upon the property of said debtor.

Edward J. Ryan

Referee in Bankruptcy

LETTER FROM JEFFERY A. SHUMAN TO JUDGE ROBERT L. CARTER
DATED APRIL 1, 1974

1358

Saxe, Bacon, Bolan & Manley

39 EAST 60TH STREET
NEW YORK, NEW YORK 10021

(212) 472-1400

THOMAS A. BOLAN
COUNSEL

JOHN GODFREY SAXE (1909-1983)
ROGERS H. BACON (1910-1982)

ROY M. COHN
SCOTT E. MANLEY (ADMITTED ILLINOIS AND INDIANA)
MICHAEL ROSEN

DANIEL J. DRISCOLL

HAROLD SCHWARTZ
MELVYN RUBIN
JEFFREY A. SHUMAN
LORIN DUCKMAN

April 1, 1974

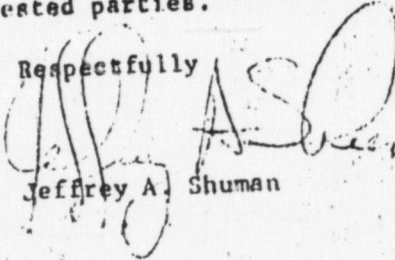
Judge Robert L. Carter
United States Court House
Foley Square
New York, N.Y.

Re: Daily Mirror v. Ancorp

Dear Judge Carter:

Enclosed please find the Memorandum of Law you requested in support of Ancorp National Services position that a stay by the Bankruptcy court is in effect in the above entitled case. I have forwarded copies of the Memorandum of Law to all of the interested parties.

Respectfully


Jeffrey A. Shuman

JAS:rr
encl.

✓

LETTER FROM MARK D. GERAGHTY TO HONORABLE ROBERT L. CARTER
DATED APRIL 17, 1974

1458

JAMES W. RODGERS
JOHN R. SCHOEMER, JR.
THOMAS P. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PAKULA
RONALD S. DANIELS
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MARK D. GERAGHTY
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

WILLIAM A. ALPER
MICHAEL S. DELOHLAVEK
FREDERICK D. BIRKON
JESSE W. BRENNER
JOHN M. CALLAGY
RICHARD J. CODDING
RICHARD C. CONOVER
DOUGLAS C. FAIRHURST
PETER C. GOULD
SPENCER C. HUNT
JAMES K. LEADER
TERENCE J. LYNCH
SLADE R. METCALF
RAYMOND U. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

STUART N. UPDIKE

HOWARD CARLSON

COUNSEL

TELEPHONE

(212) MURRAY HILL 2-4557

CABLE: TUCARRO

TELEX: NQ 12-7115

April 17, 1974

BY HAND

Honorable Robert L. Carter
United States District Judge
United States District Court
for the Southern District of
New York
United States Courthouse
Foley Square
New York, New York

Re: Daily Mirror v. New York News,
Inc., et al.; 71 Civ. 1211 (RLC)

Dear Judge Carter:

This firm represents defendant New York News,
Inc. in the above-entitled action.

Pursuant to an order of this Court made orally
at a pre-trial conference conducted on February 28, 1974
all discovery proceedings in this action were to be con-
cluded by April 12, 1974 which was also the last day
designated by this Court for the filing of motions.

On April 9, 1974 we requested a two-week
extension of the time within which to make motions
advising your clerk that our client intended to move
for summary judgment and that the attorney for defendant
Henry Garfinkle (sued herein as "Harry Garfinkle") wished
to join in said motion but was then hospitalized and was

15sa

Honorable Robert L. Carter

- 2 -

April 17, 1974

thus unable to participate in the motion in time for the filing of motion papers by April 12, 1974. On April 11, 1974 we were advised by your clerk that the Court was agreeable to an extension of time to file motions until April 24, 1974.

Subsequent to our request for additional time and the receipt of oral advice from your clerk that an extension of time until April 24, 1974 had been granted we received in the mail an undated notice of motion made by plaintiff's attorney seeking an order from the Court permitting further discovery in the form of examinations before trial.

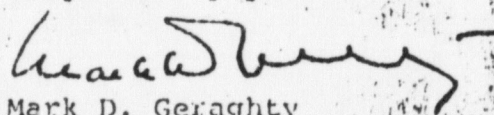
That motion was returnable today and we filed opposing papers with respect to that motion at noon yesterday.

Our decision to move for summary judgment in this action was predicated on the fact that discovery would be completed on the day the motion was made except for the service upon plaintiff's attorney answers and objections to interrogatories directed to our client. The answers and objections to those interrogatories would, of course, have been in the hands of plaintiff's attorney within sufficient time for him to use the answers in connection with any opposition to our motion for summary judgment.

Now it appears that plaintiff has a desire to interrogate specific parties and witnesses. Under the circumstances we deem it appropriate to respectfully request that the Court further extend the period within which motions may be made to a day either 10 days after the entry of an order denying the request for additional depositions or 10 days after the completion of any depositions ordered by the Court.

A copy of this letter is being sent to all counsel of record in this action.

Respectfully yours,



Mark D. Geraghty

MDG/cs

cc: To all counsel

LETTER FROM MARK D. GERAGHTY TO HONORABLE ROBERT L. CARTER

DATED MAY 15, 1974

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

16sa

JAMES A. ROBERTS
JOHN R. SCHENKER, JR.
THOMAS P. TREFWAY
JOHN J. MAGUIRE
EDWARD H. MAHER
WILLIAM F. ROEDMAN, JR.
ANDREW S. ROEDMAN
PHILIP D. PARKER
RONALD S. DANIELS
RICHARD S. DANIELS
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JOHN D. CARON
MICHAEL S. BELONCHAEV
JESSE H. BRENNER
JOHN M. CALLAGY
RICHARD J. COHLEN
DOUGLAS C. FARRHURST
PETER C. GOULD
SPENCER C. HUNT
JOSEPH F. KEELE
RICHARD E. KEELE, JR.
JAMES K. LEACH
TERENCE J. LYNN
RAYMOND L. SCIENTINI
WILLIAM J. THOM
ROGER C. WILLIAMS

STUART N. UPDIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE
(212) MURRAY HILL 2-4567

CABLE: TUCARRO
TELEX NO. 12 7815

May 15, 1974

Hon. Robert L. Carter
United States District Judge
Southern District of New York
Foley Square
New York, New York 10013

RE: Daily Mirror Inc. v. Ancorp.,
et al.; 71 Civ. 1211(RLC)

Dear Judge Carter:

On Tuesday, May 14, 1974, Frederick D. Berkon of this office had a telephone conversation with your law clerk Harlon Dalton in connection with your oral order of February 28, 1974 in which you fixed May 17, 1974 as the last day for parties in the above-entitled litigation to submit a pre-trial order in the usual form containing stipulations as to facts and issues and other issues normally included in such a pre-trial order.

The purpose of Mr. Berkon's call was to determine if, in the circumstances, the parties to this litigation would be required to comply with the Court's oral order of February 28, 1974 to submit a pre-trial order by May 17, 1974. Mr. Berkon's telephone call was, of course, prompted by the fact that there is now pending before you for determination a motion by plaintiff for an order permitting it to conduct further discovery in the within action.

Mr. Berkon's call was further prompted by the fact that the Court has already granted defendants an



Hon. Robert L. Carter

- 2 -

May 15, 1974

17sa

extension of time to make any motions in this action until 10 days after the completion of any discovery permitted by the Court as a result of plaintiff's motion, or after the denial of said motion.

Your clerk advised Mr. Berkon that because of the intervening events hereinabove discussed the parties will not be required to submit a pre-trial order by May 17, 1974, and that the submission of a pre-trial order will await the determination of plaintiff's motion seeking further discovery. Mr. Dalton requested that we advise all counsel of the foregoing and we are doing so by sending a copy of this letter to all counsel of record in the litigation.

Respectfully,



Mark D. Geraghty

MDG/cs

cc: All counsel

LETTER FROM MARK D. GERAGHTY TO ROBERT W. FARRELL, 18sa
ADD 10 BARRETT W. KREISBERG AND SAXE, BACON, BOLAN & MANLEY,
DATED APRIL 18, 1974

TOWNLEY, UMPIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N.Y. 10017

JAMES W. RODGERS
JOHN R. SCHOLMER, JR.
THOMAS P. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PARULA
RONALD S. DANIELS
RICHARD J. DARNES
RICHARD R. LUTZ
JOHN PAUL REINER
PHILIP S. GLICK
MARK D. GERAGHTY
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

WILLIAM F. ALPER
MICHAEL S. BECHLAVICK
FREDERICK D. BYRON
JESSE H. BRENNER
JOHN P. CALLAHAN
RICHARD J. COODING
RICHARD C. COOVER
DOUGLAS C. FAIRHURST
PETER C. GOULD
SPENCER C. HUNT
JAMES K. LEAFER
TERENCE J. LYNN
SLATE H. METCALF
RAYMOND J. SCIENTINI
EDWARD F. VASALLO
ROGER F. WILLIAMS

STUART N. UMPIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE
(212) 633-1111

CABLE: TUCARRO
TELEX: NO. 27818

April 18, 1974

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York 10016

Barret W. Kreisberg, Esq.
104 East 40th Street
New York, New York 10016

Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York

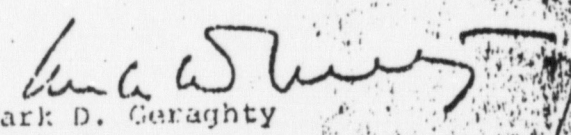
Re: Daily Mirror v. New York
News, Inc., et al.

Gentlemen:

Reference is made to my letter of April 17, 1974 to Judge Carter. This morning I received a telephone call from Judge Carter's chambers in which I was advised that the Court has granted the request of this firm for an extension of time within which to make motions in the above-entitled action.

Judge Carter's clerk has asked me to advise you that the time within which motions may be made in the above-entitled action is now extended to 10 days after the entry of an order denying plaintiff's request for additional discovery or, if additional discovery be granted, 10 days after the completion of any depositions ordered by the Court.

Sincerely,


Mark D. Geraghty

MDG/cs

cc: Judge Carter

APR 22 1974 LETTER FROM ROBERT W. FARRELL TO HONORABLE ROBERT L. CARTER DATED APRIL 19, 1974 19sa

ROBERT W. FARRELL

ATTORNEY AT LAW

67 PARK AVENUE
NEW YORK, N.Y. 10016

April 19th, 1974

Hon. Robert L. Carter
United States District Court
Southern District, New York
Foley Square, New York, N.Y. 10007

71 Civ. 1211
Re: Daily Mirror Inc.,
New York News Inc., et al.

Dear Judge Carter:

We have before us two letters, dated April 17th and 18th, 1974 written by Mark D. Geraghty Esq. of the firm of Townley, Updike, Carter and Rogers Esqs., attorney for the defendant New York News Inc.

Mr. Geraghty is the third attorney of that firm to enter this matter the others being John P. Canoni Esq., Andrew Hughes Esq.

Harry Garfinkle's attorney was Eugene Frederick Roth, now substituted by Barret Kreisberg, and the defendant Ancorp Inc., now seeking to have Roy Cohn represent them. All of these changes taking place before we completed our examinations before trial, all joining in delaying our preparation for trial.

These changes, often without any replies to our letters have caused confusion, disruption, and tactics without any sense of responsibility to the proceedings before this Court.

We have reserved our rights to continue our examinations of those already examined, subject to the taking of depositions of key examinees.

Now we discover that the firm of Townley, Updike, Carter & Rogers Esqs. have picked up a co-defendant as an ally and have requested your Honor to extend the time they seek due to Mr. Kreisberg (attorney for Garfinkle) having been in the hospital for a few days with an illness described as not serious.

Mr. Kreisberg having received the transcripts of Garfinkle on December 8th, 1973 has yet to return them.

This action is an important matter of litigation.

The cast of defendants being the same companies and individuals, which confronted the United States Government in a recently decided case of the Federal Trade Commission (70 Civ 5770, Bonsal J.); filed Nov. 30th, 1973.

It is therefore not without experience that counsel for the defendants can employ to set up impediments.

When Mr. Geraghty announced to our associate counsel William Klein Esq. that he was now taking over this matter, he further added the announcement of his intention to move within the short time available to us for our continued examinations, of his plan to move for summary judgment, even though his firm has resisted, and opposed the examinations we sought and in many instances having been promised these examinations.

Consenting, with reservations, to examine Mr. Flynn by the use of interrogatories, same were presented to Townley, Updike, Carter & Rogers. More than ten days ago we were promised by Mr. Geraghty that these would be served to us on Monday April 15th, 1974. Today as marked by the date of this letter we have not received these answers.

Normally considering the delay, caused by the attorney for the defendants, particularly for the New York News, Inc., counsel would wait the completion of these examinations, with launching a motion for summary judgment, that is in good faith.

When Mr. Klein was informed by Mr. Geraghty of his intention to make such motion, Mr. Klein responded that such tactic was a diversionary tactic, premature. It is now apparent from Mr. Geraghty's letter of the 18th inst., that the Court's position coincides with that position expressed by Mr. Klein.

Only Mr. Geraghty as a recent entrant into this matter could make the naive observations contained in his letter (page 2 (April 17/74):

21sa

87 PARK AVENUE
NEW YORK, N. Y. 10018

- (a) "Mr. Geraghty, ---our decision to move for summary judgment was predicated on the fact that discovery would be completed on the day the motion was made"

A rather strange comment in view of Townley, Updike Carter & Rogers ~~Page~~ not having served the answer to our interrogatories and knowing of our reservations to recall Mr. Underwood and to continue to examine Mr. Flynn if the answers to our interrogatories are not responsive.

- (b) (page 2 Mr. Geraghty) "now it appears that plaintiff has a desire to (examine) interrogate specific parties and witnesses."

Which statement is indicative of Mr. Geraghty's recent entrance into this matter since we have been trying without success to examine these witnesses and parties requiring our motion and order of this Court for such examinations.

It is respectfully submitted that the two letters we refer to, discloses a less than constructive intent to deal with the deposition problem which has long been pending, through the blocking efforts of all the attorneys for the defendants.

Respectfully yours,

Robert W. Farrell
Robert W. Farrell

rwf/mhs

CC: Townley, Updike, Carter & Rogers Esqs.
& Mark D. Geraghty Esq.

NOTICE OF SETTLEMENT

22sa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of Petition for

Arrangement under Chapter XI of
AUG 27 1974

73-B-281

ANCORP., INC.

EDWARD J. RYAN
BANKRUPTCY JUDGE
Debtor

NOTICE OF SETTLEMENT

-----X
SIRS:

PLEASE TAKE NOTICE, that an order of which the within
is a true copy, will be presented for settlement to Hon. Edward J. Ryan
Judge in the Bankruptcy Court of the within named court, at the
Courthouse, Foley Square, New York, N.Y. on the 27th day of August
1974 at 9:30 A.M.

Dated: August 20th, 1974

Yours, etc.,

ROBERT W. FARRELL
Attorney for Daily Mirror Inc.,
67 Park Avenue
New York City, N.Y. 10016
516-248-8245

TO: BALLON, STOLL & ITZLER ESQS
1450 Broadway
New York City, N.Y.

LETTER FROM ROBERT W. FARRELL TO HONORABLE ROBERT L. CARTER
DATED SEPTEMBER 30, 1974 WITH ORDER WITH NOTICE OF ENTRY

ROBERT W. FARRELL

ATTORNEY AT LAW

23sa

87 PARK AVENUE
NEW YORK, N. Y. 10018

September 30th, 1974

Hon. Robert L. Carter
Judge United States District Court
Southern District
Foley Square, New York.

Re; Daily Mirror Inc./
New York News, Inc.,
et al 71 Civ. 1211

Honorable Sir;

Enclosed you will find a copy of an order signed by
the Hon. Edward J. Ryan, Bankruptcy Court, Southern Dis-
trict, New York.

This order was based on my Motion returnable on July 17th,
which was not opposed.

However on August 6th, 1974 the attorneys for Ancorp
National Services, Inc., wrote the Judge requesting that
they requested a hearing regarding the vacation of the
stay. (Copy of such request enclosed.)

This delayed matters considerably until on or about Sept.
5th, Ballon, Stoll & Itzler, Ancorp's attorneys withdrew their
request for the hearing and the order was signed Sept.
12th, 1974. Following that the papers seemed to have been
misplaced or filed in another folder making it difficult
to locate.

Finally the signed order was found and I am enclosing same
herein.

There is now a pending a Motion before your Honor dated,
April 8th, 1974 made returnable on the 17th day of April, 1974
which was delayed due to the proceedings before the Hon.
Edward J. Ryan,, and awaits your order.

Thanking you, I remain,

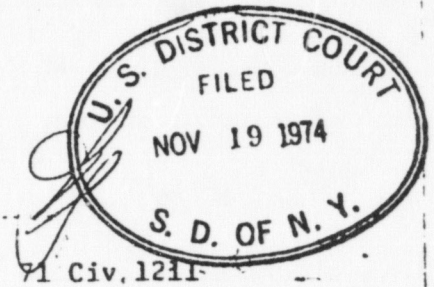
Sincerely,

Robert W. Farrell
516-248-8245

rwf/ms

24sa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
DAILY MIRROR INC.,

Plaintiff

-against-

NEW YORK NEWS, INC., HARRY GARFINKLE,
UNION NEWS COMPANY, INC., AMERICAN
NEWS COMPANY, INC., and ANCORP, INC..

Defendants
-----X

71 Civ. 1211-
ORDER WITH NOTICE OF ENTRY

SIRS:

PLEASE TAKE NOTICE that the within is a true copy of an
order of Hon. Edward J. Ryan entered and filed on the 12th day
of September, 1974.

Dated: New York, N.Y.
October 1, 1974

Yours, etc.

ROBERT W. FARRELL
Attorney for the Plaintiff
67 Park Avenue
New York, N.Y. 10016

TO:

Townley, Updike, Carter and Rogers Esqs.
220 East 42nd Street
New York, N.Y. 10017

Barret W. Kreisberg Esq.
104 East 40th Street
New York City, N.Y. 10016

Saxe, Bacon, Bolan & Manley Esqs.
39 East 68th Street
New York, N.Y.

Ballon, Stoll & Itzler Esq.
1450 Broadway
New York, N.Y.

LETTER FROM JUDGE CARTER TO ALL COUNSEL DATED OCTOBER 10, 1974

25sa

UNITED STATES DISTRICT COURT

CHAMBERS OF
JUDGE ROBERT L. CARTER
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

October 10, 1974

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York 10016

Messrs. Townley, Updike, Carter & Rodgers
220 East 42nd Street
New York, New York 10017

Barret W. Kreisberg, Esq.
104 East 40th Street
New York, New York 10016

Messrs. Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York 10021

Re: Dailey Mirror, Inc. v. New York
News, Inc., Harry Garfinkle,
Union News Company, Inc., American
News Company, Inc. and Ancorp, Inc.
71 Civil 1211

Gentlemen:

Mr. Farrell has filed with me in a covering letter dated September 30, 1974, a copy of an order by Bankruptcy Judge Ryan lifting the restraint heretofore interposed in re Ancorp, Inc. in these proceedings.

Mr. Farrell has by letter indicated that his April 8th motion is pending before me. That motion was denied without prejudice to plaintiff's right to renew it after application had been made and acted upon by the bankruptcy judge in an endorsement dated June 5, 1974. Therefore, I will treat the letter as a renewal of the April 8th motion. It would have been the better practice for plaintiff to have renewed the motion formally with a return date. However, the April 8th motion has been served on all parties.

26sa

TO ALL COUNSEL:

- 2 -

October 10, 1974

Defendants have until October 23 to file
any opposition, and plaintiff may reply by October 25.

Sincerely yours,

Robert H. Carter

LETTER FROM MARK D. GERAGHTY TO HONORABLE ROBERT L. CARTER DATED
OCTOBER 30, 1974

27sa

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

STUART N. UPDIKE

J. HOWARD CARTER

COUNSEL

TELEPHONE

(212) MURRAY HILL 2-4557

CABLE: TUCARRO

TELEX NO. 12-7015

JAMES W. RODGERS
JOHN R. SCHOEMER, JR.
THOMAS P. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PAKULA
RONALD S. DANIELS
RICHARD J. BARNES
RICHARD R. LUTZ
JOHN PAUL REINER
PHILIP S. OLICK
MARK D. GERAGHTY
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

WILLIAM A. ALPER
MICHAEL S. BELOHLAVEK
FREDERICK D. BERKON
JESSE H. BRENNER
JOHN M. CALLAGY
RICHARD J. CODDING
RICHARD C. CONOVER
DOUGLAS C. FAIRHURST
PETER C. GOULD
SPENCER C. HUNT
PHILIP L. KIRSTEIN
JAMES K. LEADER
TERENCE J. LYNCH
ROBERT C. MANGONE
SLADE R. METCALF
RAYMOND J. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

October 30, 1974.

Hon. Robert L. Carter
United States District Judge
Southern District of New York
Foley Square
New York, New York 10013

Re: Daily Mirror Inc. v. Ancorp.,
et al.; 71 Civ. 1211 (RLC)

Dear Judge Carter:

We are in receipt of an affirmation of Robert W. Farrell dated October 25, 1974 which has apparently been served and filed in reply to my affidavit sworn to the 16th day of October, 1974.

While we do not wish to engage in a never-ending exchange with Mr. Farrell I feel constrained to comment upon several aspects of Mr. Farrell's most recent submission to the Court. Mr. Farrell comments in the fourth and fifth paragraphs of his affirmation on the circumstances surrounding the vacating of the stay order of the bankruptcy court in the proceedings involving Ancorp. Inc.

It should be noted that neither our client nor this firm has ever taken any position with respect to the stay order which was the subject of Mr. Farrell's motion before the bankruptcy referee. It was our view that this matter concerned the plaintiff and Ancorp Inc. and that Mr. Farrell would take what steps he deemed necessary to protect his interests and Ancorp Inc. would do the same.

We therefore must respectfully point out that neither ourselves nor our client have in any way engaged in a "waste of time". Indeed, it seems to us that Mr. Farrell has

Hon. Robert L. Carter

2

October 30, 1974

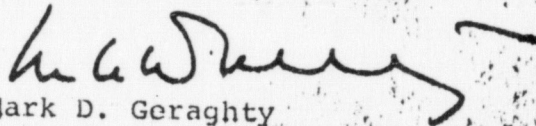
no one to blame but himself for not having acted more promptly.

In his affirmation Mr. Farrell states that on the return of his motion in the bankruptcy court "no one objected nor was anyone present to oppose the motion." This is true. We know this because I was present on the return of the motion in the bankruptcy court and advised the Court that our client would take no position with respect to Mr. Farrell's motion. I point this out to the Court since Mr. Farrell's affirmation might be read to suggest that this firm was not present at the return of the motion. As indicated above, this is not the fact.

We make these comments in view of the fact that Mr. Farrell's affirmation seems directed towards our client and we would like to dispel any implication that either we or our client were somehow involved in an effort to delay the prosecution of this litigation. Quite to the contrary we are anxious to see it resolved as promptly as possible.

Finally, in the last paragraph of his affirmation Mr. Farrell would seem to suggest that the New York News Inc. is only now suggesting that the plaintiff's motion for additional discovery be denied. This is not the case. As the Court will see from the initial affidavit of this firm filed in opposition to the plaintiff's motion for discovery our position with respect to such motion now is identical to the position we took at the time of our original response thereto.

Respectfully,



Mark D. Geraghty

MDG/cs

LETTER FROM ROBERT W. FARRELL TO CLARK D. McCULLOUGH, DEPUTY
CLERK, DATED DECEMBER 2, 1974

29sa

ROBERT W. FARRELL
ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8248

NEW YORK CITY OFFICE
67 PARK AVE. N. Y. C. 10018
212-685-9346

December 2nd, 1974

Clark D. McCullough, Deputy Clerk
Southern District Court
Foley Square, New York 10007

Dear Sir:

Re: Daily Mirror Inc.,/
New York News, Inc. et al.

After a conversation with Mark Cohen Esq., it was suggested that a letter be addressed to you concerning the above titled matter.

A motion was made before the Hon. Robert L. Carter on April 8th, 1974 disqualifying Roy Cohn Esq. or his associates from representing the defendants American News Company Inc., Union News Co., Inc and Ancorp. Inc. and further to examine before trial one William McCullough, Willie Levine and Archie Gordon etc.

This motion was denied due to a stay by Judge Edward Ryan Judge in the Bankruptcy Court, Southern District. However upon motion this stay was vacated, when no one opposed it. However at a later date the law firm of Ballon, Stoll and Itzler Esqs. requested a hearing stating they were never notified.

Later they withdrew their request for a hearing and the order vacating the stay was signed.

On November 19th, 1974, an order was signed by the Hon. Robert L. Carter, which indicated the vacating of this stay.

On October 10th, 1974 in a letter by Hon. Judge Carter to all the attorneys in this matter it was stated that the Judge was treating my letter of September 30th as a renewal of my motion of April 8th, 1974 and gave the defendants until October 23rd to file any opposition.

To date no opposing papers have been served upon me.

ROBERT W. FARRELL
ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8248

NEW YORK CITY OFFICE
87 PARK AVE. N.Y.C. 10018
212-688-8248

-2-

IN view of the above, I have been waiting for the Hon. Robert L. Carter's decision on the April 8th, 1974 motion, ordering our examination of Willie Levine, Archie Gordon and William McCullough and further the exclusion of Roy Cohn Esq or any associates of his firm from representing the American News Company Inc., Union News Company Inc., and Ancorp, Inc.

Thanking you for giving this matter your immediate attention, I remain,

Very truly yours,

R. W. Farrell
Robert W. Farrell

Copy of Hon. Judge Robert L. Carter
dated Oct. 10th, 1974 enclosed.
rwf/ms

LETTER FROM MARK D. GERAGHTY TO ROBERT W. FARRELL DATED
JANUARY 27, 1975

31sa

TOWNLEY, UPDIKE, CARTER & RODGERS
220 EAST FORTY-SECOND STREET
NEW YORK, N.Y. 10017

JAMES W. RODGERS
JOHN R. SCHOFER, JR.
THOMAS H. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PAKULA
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JESSE H. BRENNER
JOHN M. CALLAGY
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DOUGLAS C. FAIRHURST
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TERENCE J. LYNCH
ROBERT C. MANGONE
BLADE R. METCALY
RAYMOND J. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

STUART H. UPDIKE
HOWARD CARTER
COUNSEL
TELEPHONE
1212 MURRAY HILL 6-6800
CABLE: TUCARRO
TELEX: NO. 18 7814

January 27, 1975

Robert W. Farrell, Esq.,
110 Old Country Road
Mineola, New York 11501

Re: Daily Mirror, Inc. v. New York
News, Inc., et al.,

Dear Mr. Farrell:

We acknowledge receipt of your letter dated January 24,
1975.

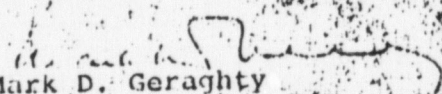
As you know, Judge Carter denied your motion originally
returnable on April 12, 1974 insofar as it sought permission
to conduct further depositions in the above-entitled action,
including the deposition of Archie Gordon.

It is not the intention of this firm to agree to participate
in a deposition which you sought permission from the court
to take and which request was denied by the court.

In view of the foregoing there is no point to our
discussing the subject of your examination of Mr. Gordon any
further.

With respect to the last paragraph of your letter of
January 24, 1975 I do not understand what documents you
are referring to. As far as we are concerned, we have produced
all documents that we agreed to produce.

Sincerely,


Mark D. Geraghty

MDG/cs

LETTER FROM MICHAEL ROSEN TO ROBERT W. FARRELL, ESQ., DATED
JANUARY 28, 1975

32s

Saxe, Bacon, Bolan & Manley

39 EAST 68TH STREET
NEW YORK, NEW YORK 10021

JOHN GODFREY SAXE (1909-1953)
ROGERS H. BACON (1910-1962)

(212) 472-1400

THOMAS A. BOLAN
COUNSEL

ROY M. COHN
SCOTT E. MANLEY (ADMITTED ILLINOIS AND INDIANA)
MICHAEL ROSEN

January 28, 1975

DANIEL J. DRISCOLL

HAROLD SCHWARTZ
MELVYN RUBIN
JEFFREY A. SHUMAN
LORIN DUCKMAN

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York 10016

Re: Daily Mirror Inc./
New York News Inc., et al.

Dear Mr. Farrell:

Your letter of January 24, 1975 addressed to my firm has been referred to my attention.

Please be advised that I have absolutely no familiarity with this matter, and assume that Roy M. Cohn of our firm would be the attorney who would have such familiarity. Mr. Cohn is presently out of the country, and will not return until approximately February 10, 1975. I suggest that you try to contact Mr. Cohn at that time.

Very truly yours,

SAXE, BACON, BOLAN & MANLEY

Michael Rosen
Michael Rosen

sb

LETTER FROM ROBERT W. FARRELL TO MARK COHEN DATED FEBRUARY 4, 1975

33sa

ROBERT W. FARRELL
ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-249-8248

NEW YORK CITY OFFICE
87 PARK AVE. N.Y.C. 10018
212-688-8348

February 4th, 1975

Mark Cohen Esq.
Chambers of the Hon. Robert L. Carter
United States Courthouse
Foley Square
New York, N.Y. 10007

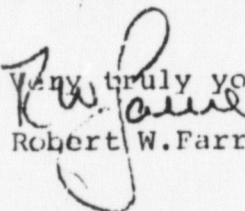
71 CIV 1211 R.L.C.
Re: Daily Mirror Inc.,
V. New York News, Inc., et al

Dear Mr. Cohen:

You will recall that in the last recent contact with you in the above entitled matter, relating to the pending unfinished examinations before trial, you referred to the fact that the endorsement of the Judge, dated November 19th, 1974, covered the right to proceed with witness examination, now that the Bankruptcy stay had been lifted by the Hon. Judge Edward Ryan.

However, despite this, the order dated October 12th, 1974 with no opposition having ever been served to the renewed motion, thus one party has declined to proceed except to obtain rulings (Barret C. Kreisberg Esq) from the District Judge; the second party (Saxe, Bacon, Bolan & Manley Esqs) merely asserts knowing nothing of the proceedings, at this stage, in the absence of participating counsel) and the attorneys for another of the defendants (Townley, Updike and Carter Esqs.) seeks to set us back to the date of the motion made in April 1974, which was denied pending the lifting of the bankruptcy stay.

Thus, while we desire to move along expeditiously, matters are in a manner of disarray, and we would like you to perhaps assist in bringing to track all counsel. Thanking you I remain,

Very truly yours,

Robert W. Farrell

rwf/ms

MAR 26 1975

LETTER FROM ROY M. COHN TO HONORABLE MARVIN E. FRANKEL, DATED

MARCH 18, 1975

34sa

Saxe, Bacon, Bolan & Manley

39 EAST 68TH STREET

NEW YORK, NEW YORK 10021

JOHN GODFREY SAXE (1909-1953)
ROGERS H. BACON (1919-1982)

(212) 472-1400

THOMAS A. BOLAN
COUNSEL

ROY M. COHN
SCOTT E. MANLEY (ADMITTED ILLINOIS AND INDIANA)
MICHAEL ROSEN
DANIEL J. DRISCOLL
HAROLD SCHWARTZ
MELVYN RUBIN
JEFFREY A. SHUMAN
LORIN DUCKMAN

March 18, 1975

~~MARVIN E. FRANKEL~~
Honorable ~~Robert L. Carter~~
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Daily Mirror, Inc. v.
New York News, et al. '11 Civil 1211 M.E.F.

Dear Judge Carter:

I am senior partner in the firm of Saxe, Bacon, Bolan & Manley, attorneys for the defendant Ancorp, Inc. in the above-entitled matter. I send Your Honor this letter to state that on behalf of our client, we hereby adopt and incorporate the affidavit in opposition and accompanying exhibits submitted by counsel for the defendant New York News, Inc. in response to the plaintiff's motion dated March 4, 1975.

Suffice it to say that I am amazed that plaintiff's counsel so completely either ignored or misunderstood the order of the Court dated November 15, 1974.

Accordingly, I, too, request that the Court deny plaintiff's instant motion in all respects.

Respectfully,

Roy M. Cohn
Roy M. Cohn

sb

cc: Townley, Updike, Carter & Rodgers, Esq.
220 East 42nd Street
New York, New York 10017

LETTER FROM BARRETT G. KREISBERG TO HONORABLE JUSTICE ROBERT
MARCH 18, 1975. CARTER DATED MARCH 18, 1975

35sa

BARRETT G. KREISBERG

COUNSELOR AT LAW

104 EAST 40TH STREET

NEW YORK, N.Y. 10016

212-R67-3380

WESTCHESTER OFFICE

SIX CHESTER AVENUE

WHITE PLAINS, N.Y. 10601

914-428-3000

PLEASE RESPOND TO

March 18, 1975

Hon. Justice Robert L. Carter
United States District Court
Southern District of New York
United States Courthouse
Chamber 2903
Foley Square
New York, N.Y. 10007

Re: Daily Mirror, Inc.

vs.

New York News Inc. et al.


71 Civ. 1211/ R.L.G.

Dear Judge Carter:

In accordance with provisions in the New York Law Journal,
enclosed is a copy of the papers in opposition to the
motion made by the plaintiff, returnable on March 21, 1975.

A copy of the letter enclosing the original motion papers
to the Clerk's office is enclosed herewith.

Very truly yours,


Barrett G. Kreisberg

BGK:ns

LETTER FROM BARRETT G. KREISBERG TO UNITED STATES DISTRICT
COURT DATED MARCH 18, 1975 WITH ATTACHED AFFIDAVIT

36sa

BARRETT G. KREISBERG

COUNSELOR AT LAW

104 EAST 40TH STREET

NEW YORK, N.Y. 10018

212-867-3380

WESTCHESTER OFFICE

SIX CHESTER AVENUE

WHITE PLAINS, N.Y. 10601

914-428-3000

PLEASE RESPOND TO

March 18, 1975

United States District Court
Clerk of the Southern District of N.Y.
United States Courthouse - Unit 5, Room 505
Foley Square
New York, N.Y. 10007

Re: Daily Mirror, Inc.
vs.
New York News Inc. et al.

71 Civ. 1211/ R.L.C.

Gentlemen:

Enclosed you will find an affidavit in opposition to a
motion made by plaintiff, returnable March 21, 1975 before
Hon. Judge Robert L. Carter.

A copy of these papers is being forwarded to the Judge's
chambers.

Very truly yours,

Barrett G. Kreisberg

BGK:ns
enc.

duplicate

MAR 18 1975

37sa

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAILY MIRROR INC.,

Plaintiff,

71 City, 1211/R.L.C

-against-

NEW YORK NEWS, INC., HENRY GARFINKLE,
AMERICAN NEWS COMPANY, INC., UNION
NEWS COMPANY, INC., and ANCORP. INC.,

Defendants.
-----X

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

BARRETT G. KREISBERG, being duly sworn, deposes and says:

I am an attorney duly admitted to practice before this Court and represent Henry Garfinkle in the above entitled action. I am familiar with all the proceedings had heretofore and this affidavit is made in opposition to the plaintiff's motion dated March 4, 1975 and returnable March 21, 1975 seeking to renew a prior motion for further discovery.

I have read the affidavit of Mark D. Geraghty in opposition to the plaintiff's motion and who is the attorney for New York News, Inc. and fully subscribe to the contents of his

affidavit.

I would further point out to the Court that on three occasions the defendant, Henry Garfinkle, has submitted to examination before trial by the plaintiff's attorney and on each day has testified fully and completely as to all matters put to him. In fact, on the third day of the examination, the plaintiff's attorney kept going over and over the same subject matter that was previously discovered. There is obviously nothing new for him to ask of the defendant Garfinkle.

On January 28, 1975, I wrote to the attorney for the plaintiff and a copy of said letter is attached hereto indicating that he had completed his examination of Mr. Garfinkle and was just re-hashing old questions on the last examination. There is obviously no need to continue Mr. Garfinkle's deposition and this is just a form of harassment by plaintiff's counsel.

Plaintiff's attorney also states in his affidavit "While each response will appear not to oppose in principle, the resumption of the examination of witnesses * * *." This statement is completely untrue and I do, on behalf of Henry Garfinkle oppose in principle and otherwise any further examination of Mr. Garfinkle since he has fully and completely testified and these depositions are available to the Court for review.

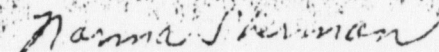
As has further been pointed out in Mr. Geraghty's affidavit, this Court has denied the plaintiff's motion of April 8, 1974 and, therefore, this motion should be denied in all respects since no new material has been set forth in the plaintiff's affidavit to warrant further examinations.

WHEREFORE, it is respectfully requested that the plaintiff's motion be denied in all respects.


Barrett G. Kreisberg

Sworn to before me this

18 day of March, 1975,


Notary Public

NORMA SHERMAN
Notary Public, State of
No. 60-1067-25
Westchester County
March 30, 1975

LETTER FROM MARK D. GERAGHTY TO ROBERT W. FARRELL DATED
APRIL 1, 1975

40sa

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N.Y. 10017

STUART N. UPDIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE

(212) MURRAY HILL 2-4667

CABLE: TUCARRO
TELEX: NO. 12-7818

JAMES W. RODGERS
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JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

WILLIAM A. ALPER
MICHAEL S. BELOHLAVEK
FREDERICK D. BERKON
JESSE H. BRENNER
JOHN M. GALLAGY
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SPENCER C. HUNT
PHILIP L. KIRSTEIN
JAMES R. LEADER
TERENCE J. LYNCH
ROBERT C. MANGONE
SLADE R. METCALF
RAYMOND J. SOFFICIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

SPECIAL DELIVERY

April 1, 1975

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Robert W. Farrell, Esq.
110 Old Country Road
Mineola, New York 11501

Re: Daily Mirror v. New York
News, Inc., et al.

Dear Mr. Farrell:

Pursuant to our understanding reached before Judge Frankel on March 26, 1975 we have communicated with Archie Gordon and he has agreed to be available at 291 Van Brunt Street, Brooklyn, New York on April 4, 1975 between 6:00 a.m. and noon for service upon him by you of a subpoena in the above-entitled action.

Mr. Gordon has also agreed to appear for the taking of his deposition at this office on Monday, April 7, 1975 at 10:00 a.m.

The News has not directed Mr. Gordon to be available for receipt of a subpoena or to appear to give testimony as a witness. He has agreed to make himself available for service of a subpoena and to testify voluntarily. Our efforts in requesting cooperation have been made solely for the purpose of assisting the Court in moving this litigation to a conclusion.

It should be clearly understood that you will be examining Mr. Gordon as a witness and not as a party in this action. The News is not producing Mr. Gordon and the News takes the position that any examination of Mr. Gordon is not an examination of the News.

Robert W. Farrell, Esq.

2

April 1, 1975

As far as we are concerned your discovery of the News has been completed and I believe that such position is fully consistent with Judge Frankel's statements at today's conference.

The News cannot guaranty that Mr. Gordon will adhere to his commitments to be available for service or to appear to testify. In the event Mr. Gordon fails to accept service of a subpoena you will have to make your own efforts to serve him. As we have previously advised you (see, for instance our letter of December 7, 1973) Mr. Gordon's home address is 448 Neptune Avenue, Brooklyn, New York 11224. His telephone number, which I obtained from the information operator, is 996-2534.

Sincerely,


Mark D. Geraghty

MDG/ca

cc: Judge Frankel
All Counsel

LETTER FROM ROBERT W. FARRELL TO MARK D. GERAGHTY DATED
APRIL 3, 1975

ROBERT W. FARRELL

ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-9245

NEW YORK CITY OFFICE
67 PARK AVE. N.Y.C. 10018
212-685-9346

April 3rd, 1975

Mark D. Geraghty Esq.
Townley, Updike, Carter & Rodgers Esqs
220 East 42nd Street
New York, N.Y. 10017

71 Civ. 1211

Re: Daily Mirror Inc.,/
New York News Inc.,

Dear Mr. Geraghty:

I am writing this for the record with a copy to the
Hon. Judge Marvin Frankel to clear the atmosphere.

Superceding your letter of April 1, 1975 which we
could not accept in its terms as a departure from
the directions given by the District Judge at pre-
trial conference, March 27th, 1975, you have now agree-
ably arranged instead, that-

ARCHIE GORDON will be available for EBT
at your office on Monday April 7th, 1975
at 10 AM that morning without prejudice;

And that after consulting with the firm of Roy Cohn
it has been arranged that-

WILLIE LEVINE will be available for EBT
at your office on April 15th, 1975 at 1PM
in the afternoon and that-

WILLIAM McCULLOUGH will be available for
the taking of his EBT at 2PM that same day.

Sincerely,

Robert W. Farrell
Robert W. Farrell

rwl/ms

cc: HON. JUDGE MARVIN FRANKEL
United States District Court
Southern District
Foley Square, New York

LETTER FROM ROBERT W. FARRELL TO HONORABLE JUDGE MARVIN
E. FRANKEL DATED APRIL 11, 1975

ROBERT W. FARRELL

ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8248

NEW YORK CITY OFFICE
87 PARK AVE. N. Y. C. 10018
212-688-9346

April 11th, 1975

Hon. Judge Marvin Frankel
United States District Court
Southern District of New York
Foley Square, New York

Re: Mirror/News
71CIV 1211.

Dear Judge Frankel:

I feel it incumbent upon me to address your Honor
relative to two matters which seemingly had been
settled.

- (a) Mr. Kreisberg, of counsel for
defendant Garfinkle, has failed
again as ordered, to deliver our
transcripts of his clients tes-
timony, which are necessary in our
preparation, of either a motion of
summary judgment or a pre-trial
memorandum; which your Honor left
more or less optional with counsel
for pre-trial focusing of the issues.
- (b) WE have also received word from
Mr. Geraghty, counsel for defendant
News, that he requires more time, as
we understand, for submission of his
motion for summary judgment.

I suggest that in the interest of expedition, we each
get down at once to a pre-trial memorandum instead,
by which each independently, instead of interdepen-
dently, submit, so that we can get moving in realization
of your Honor's objectives.

rwf/ms

cc: Townley, Updike, Carter
& Rodgers. N.Y.C.
Barrett Kreisberg Esq.
New York City, N.Y.

Very truly yours,
Robert W. Farrell

Robert W. Farrell

LETTER FROM MARK D. GERAGHTY TO HONORABLE MARVIN E. FRANKEL
DATED APRIL 14, 1975

44sa

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

JAMES W. RODGERS
JOHN R. SCHOEMER, JR.
THOMAS P. TREDWAY
JOHN J. MAJ. JHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PAKULA
RONALD S. DANIELS
RICHARD J. BARNES
RICHARD R. LUTZ
JOHN PAUL PEINER
PHILIP S. OLICK
MARK D. GERAGHTY
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JOSEPH F. KELLY, JR.

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SLADE R. METCALF
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EDWARD E. VASSALLO
ROGER E. WILLIAMS

STUART N. UPDIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE
(212) MURRAY HILL 2-4567

CABLE: TUCARRO
TELEX NO. 12-7815

BY HAND

April 14, 1975

Hon. Marvin E. Frankel
United States District Judge
United States District
Courthouse
Foley Square
New York, New York

Re: Daily Mirror, Inc. v. New
York News, Inc., et al.
Index No. 71 Civ. 1211

Dear Judge Frankel:

At the pre-trial conference held in your Honor's Robing Room on March 26, 1975 the Court fixed a briefing schedule in connection the motion for summary judgment to be made by defendants in the above-entitled action. At the same time the Court directed that three depositions be conducted in this action because of the insistence by Mr. Farrell that such depositions were crucial to plaintiff's case.

The Court directed that the depositions be concluded within two weeks from the date of the conference.

In view of the fact that it was contemplated that the depositions would be concluded by the middle of this week, I did not seek any adjustment of a briefing schedule which had been fixed prior to the Court's directions relating to the depositions.

Currently the defendants are under an obligation to file a motion for summary judgment by April 21. Plaintiff has until April 12 to file answering papers. Defendants have until April 19 to file reply papers. The Court directed that the motion for summary judgment be made returnable on May 19, 1975.

Hon. Marvin E. Frankel

2

April 14, 1975

Of the three depositions directed by the Court, one has already been conducted. That deposition was the deposition of Archie Gordon, an employee of the News. Because of problems relating to availability, the depositions of the remaining two individuals will take place on the afternoon of April 15, 1975.

Although Mr. Gordon's deposition only took a very few moments and does not, in our opinion, in any way affect our position on a proposed motion for summary judgment we are reluctant to complete the very extensive work which will be required in conjunction with the motion in advance of attending the depositions of Mr. McCullough and Mr. Levine on April 15. While we do not anticipate that those depositions will affect our decision to go forward with the motion we would like the opportunity to evaluate the testimony given at those depositions and have thus delayed efforts to finalize motion papers on the motion for summary judgment pending the taking of those depositions.

In view of the foregoing may I respectfully request the Court to adjust the briefing schedule fixed at the pre-trial hearing on March 26, 1975 by providing that defendants may file their motion for summary judgment by April 28, 1975 and by further providing that plaintiff may have until May 19 to file answering papers and defendants until May 26 to file reply papers. We assume that the Court will want to have the motion returnable on May 26, 1975 and the motion will be made returnable on that date if the adjustment to the briefing schedule requested herein is agreed to by the Court.

We have communicated with the attorneys representing other defendants who have no objection to our request.

On Friday, April 11, 1975 I attempted to communicate with Mr. Farrell, attorney for plaintiff, in order to advise him of the request contained in this letter and to explain to him the reason underlying said request.

I left a message with Mr. Farrell's secretary at noon on Friday at which time he was not in his office in Mineola.

At about 4:30 p.m. while I was involved in a number of long distance telephone calls, I asked my secretary to call Mr. Farrell's office again in order to explain the contents of my proposed letter to the Court of April 11 and to seek his agreement to the request for a one-week extension of time.

Hon. Marvin E. Frankel

3

April 14, 1975

Mr. Farrell evidenced confusion to my secretary, said he did not understand our request, stated that he would be in his office for 15 minutes and suggested that it would be time enough on Monday morning to discuss this matter again.

Mr. Farrell's message was told to me within two minutes after my secretary got off the phone with him and I called him immediately in an effort to talk to him before he left for the day. At that point we were informed that he left his office.

I now find on my desk a letter written by Mr. Farrell on April 11, 1975 referring to his conversation with my secretary. It is perfectly obvious Mr. Farrell could not have dictated, had typed and had signed his letter to the Court within the three minutes it took for me to call him back.

It is perfectly obvious Mr. Farrell understood what my secretary told him, ignored my return telephone call and chose instead to write a letter to the Court in advance of ever talking to me directly on this subject despite my efforts to reach him.

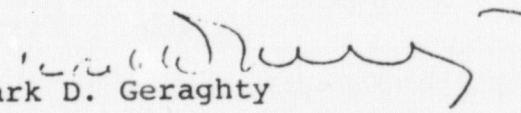
Despite Mr. Farrell's apparent objection to the request contained in this letter I nevertheless respectfully ask the Court to accommodate counsel in its desire to obtain an additional week for the completion of defendants' motion papers for summary judgment in light of the fact that the deposition schedule ordered by the Court will not be completed until tomorrow.

For the Court's convenience I am enclosing a copy of Mr. Farrell's letter of April 11, 1975 which I received this morning.

A copy of this letter is being sent to all counsel of record in the above-entitled action.

I will call your Chambers on Monday to learn of the Court's disposition of this request.

Respectfully,


Mark D. Geraghty

MDG/cs

cc: All Counsel

LETTER FROM UNITED STATES DISTRICT COURT TO MARK GERAGHTY DATED
APRIL 15, 1975 UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
NEW YORK, N. Y. 10007

47sa

CHAMBERS OF
JUDGE MARVIN E. FRANKEL

April 15, 1975

Mark D. Geraghty, Esq.
220 East 42nd Street
New York N.Y. 10017

Re: Daily Mirror, Inc. v. New York News, Inc., et al.,
71 Civ. 1211

Dear Mr. Geraghty:

The request in your letter of yesterday is
granted.

Very truly yours,

Marvin E. Frankel

cc: Robert W. Farrell, Esq.
67 Park Ave., N.Y. N.Y. 10016

Saxe, Bacon, Bolan & Manley, Esqs.
30 East 68th Street, New York N.Y. 10021

Barrett Kreisberg, Esq.
104 E. 40th Street N.Y. 10016

LETTER FROM MARK D. GERAGHTY TO JEFF SHULLMAN DATED APRIL 17, 1975

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

48sa

STUART N. UPDIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE
(212) MURRAY HILL 2-4567

CABLE: TUCARRO
TELEX: NO. 12-7815

JAMES W. RODGERS
JOHN R. SCHOEMER
THOMAS F. TREDWAY
JOHN J. MACCHIA
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JAMES K. L'ADDER
TERENCE J. LYNCH
ROBERT C. MANGONE
BLADE R. METCALF
RAYMOND J. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

April 17, 1975

Mr. Jeff Shullman
Ancorp, Inc.
477 Madison Avenue
New York, New York

Re: Daily Mirror v. New York News, Inc., et al.

Dear Jeff:

After you left the depositions which were conducted in this office on Tuesday, Mr. McCullough continued to testify for approximately three-quarters of an hour.

During the course of the deposition Mr. Farrell began to ask questions relating to certain actions of the Board of Directors of Ancorp which in my view, as an observer, were clearly unrelated to the allegations of the complaint in the above-entitled action.

Pursuant to an understanding I had with Mr. Farrell we discontinued the deposition for a short time during which I told Mr. Farrell that in my view it was unfair for him to pursue these matters in the absence of Mr. McCullough's counsel.

In consequence I suggested to Mr. Farrell that he discontinue the line of questioning that he was then pursuing and suggested to him that I would not object to his promptly making an application to the Court to continue Mr. McCullough's deposition for the purpose of continuing the lines of questioning he would abandon if after discussion with you, you would not voluntarily produce Mr. McCullough for such a purpose.

I am writing this letter primarily to advise you of the foregoing exchange and by delivery of a copy hereof to Mr.

Mr. Jeff Shullman

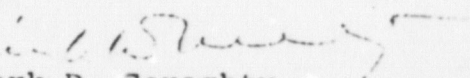
2

April 17, 1975

49sa

Farrell I am reminding him that if he wishes to pursue the lines of questioning to Mr. McCullough which he discontinued he should promptly communicate with you so that he can determine whether or not he will go to Judge Frankel for permission to continue the deposition.

Sincerely,


Mark D. Geraghty

MDG/cs

cc: Messrs. Bronstein
Farrell

LETTER FROM ROBERT W. FARRELL TO MARK D. GERAGHTY DATED

APRIL 21, 1975

ROBERT W. FARRELL

ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8245

NEW YORK CITY OFFICE
67 PARK AVE. N. Y. C. 10015
212-688-8346

April 21st, 1975

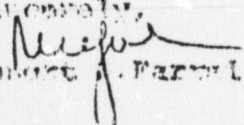
Mark D. Geraghty Esq.
Townley, Wdike, Carter & Rodgers Esqs.
220 East 42nd Street
New York City, N.Y. 10017

Re. Daily Mirror Inc./
New York News Inc.
et al.

Dear Sir:

I cannot allow your two recent
vexatious letters, one dated April 14th,
sent to the Hon. Judge Marvin A. Frankel,
and the other dated April 17th, to Jeff
Shulman Esq., with copies of both to me,
without stating that both are self ser-
ving and unwarranted in my opinion.

It would appear that you are
seeking to litigate the above titled
matter by your own correspondence.

Sincerely,

Robert W. Farrell

rwl/ls

cc. Judge Marvin A. Frankel
All other counsel.

LETTER FROM MARK D. GERAGHTY TO HONORABLE MARVIN E. FRANKEL

DATED APRIL 23, 1975

TOWNLEY, UPDIKE, CARTER & RODGERS

51sa

220 EAST FORTY-SECOND STREET

NEW YORK, N.Y. 10017

STUART N. UPDIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE
1212 MURRAY HILL 2-4567

CABLE: TUCAR110
TELEX NO. 12 7815

BY HAND

April 23, 1975

Hon. Marvin E. Frankel
United States District Judge
United States District
Courthouse
Foley Square
New York, New York

Re: Daily Mirror, Inc. v. New York News,
Inc., et al., Index No. 71 Civ. 1211

Dear Judge Frankel:

In a letter dated April 14, 1975 this firm requested an extension of one week to April 28, 1975 for the filing of a motion for summary judgment in the above-entitled action. The reason for that request was that two depositions which the court directed be taken during a pre-trial conference on March 25, 1975 were not to be conducted until Tuesday, April 15 and that we wished an opportunity to evaluate the testimony given in such deposition before completing our motion papers.

The depositions scheduled for April 15 were held on that date.

Those depositions consumed more than three hours of continuous testimony.

The transcripts of the depositions have not yet been prepared and we do not anticipate receiving those transcripts until next week.

I was in attendance at the depositions.

Portions of the testimony of Mr. McCullough, one of the witnesses, who testified on April 15, 1975 is, in our opinion,

April 23, 1975

52sa

relevant to our motion for summary judgment and we believe that reference to such testimony should be made in our motion papers.

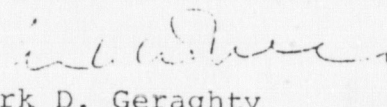
In consequence, we would respectfully request the Court for a further extension of two weeks within which to file our motion papers so that we may have the benefit of a transcript of Mr. McCullough's testimony for the purpose of making specific reference to portions thereof.

The request for an extension of two weeks is made by reason of the fact that I have just learned that I will be required to travel to Europe next week in connection with a litigation pending in Switzerland. Because of deadlines in the Swiss litigation it is impossible for me to postpone that trip.

If the Court grants the request contained in this letter the briefing schedule for the motion for summary judgment would be altered to provide for service and filing of the motion papers with supporting affidavits on May 12, 1975. Plaintiff will have until May 26, 1975 to file answering papers and defendants will have until June 9, 1975 to file reply papers.

I have communicated with defense counsel who join with me in the foregoing request. I have not communicated with Mr. Farrell for the reason this request is made on the basis of the need on the part of defendants to have available the transcript of the McCullough testimony for the purpose of including portions thereof in our moving papers.

Respectfully,



Mark D. Geraghty

MDG/cs

cc: All counsel

LETTER FROM MARVIN E. FRANKEL TO MARK D. GERAGHTY DATED APRIL 24, 1975

UNITED STATES DISTRICT COURT

UNITED STATES COURTHOUSE

NEW YORK, N. Y. 10007

53sa

April 24, 1975

CHAMBERS OF
JUDGE MARVIN E. FRANKEL

Mark D. Geraghty, Esq.
Townley, Updike, Carter & Rodgers, Esqs.
220 East 42nd Street
New York, N.Y. 10017

Re: Daily Mirror, Inc. v. New York
News, Inc., et al., 71 Civ. 1211

Dear Mr. Geraghty:

This is in response to your letter of April 23. As you know, the case has been too much delayed. Performing our respective duties under the court's program for disposing of these old cases, we cannot take quite as much time as you request.

I am now granting a final extension and setting a final schedule. Only death or catastrophes of similar order should be deemed sufficient to alter this timetable.

Your motion papers are due May 5. Plaintiff will have until May 19 to answer. You will have until May 26 for any reply.

Assuming, as we all must, that the case will remain destined for trial, the trial is set to commence at 10 a.m. on June 9, 1975, in Courtroom 129. Requests to charge and any voir dire requests should be served and filed not later than the end of business on June 5, 1975.

This letter is to be treated as an order of the court binding on all concerned.

Very truly yours,

Marvin E. Frankel
Marvin E. Frankel

cc: Robert W. Farrell, Esq.
Saxe, Bacon, Bolan & Manley, Esqs.
Barrett Kreisberg, Esq.
Eugene F. Roth, Esq.

LETTER FROM ROBERT W. FARRELL TO HONORABLE MARVIN E. FRANKEL
DATED APRIL 26, 1975

ROBERT W. FARRELL
ATTORNEY AT LAW

54sa

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-9245

NEW YORK CITY OFFICE
67 PARK AVE. N.Y.C. 10016
212-685-0346

April 26th, 1975

Hon. Marvin E. Frankel
United States District Judge
United States District Court
Southern District of New York
Foley Square, New York 10007

71CIV 1211
Re; Daily Mirror Inc./
New York News Inc., et al

Dear Judge Frankel:

As attorney for the plaintiff in this important lawsuit, affected with a public interest, I am dismayed by the succession of ex-parte verbose letters of application to YOUR HONOR, by Mark D. Geraghty Esq.

But, the letters over the years, of record will also show that, while we alone have been delayed, by defendants' counsel, they have felt that the responsibility for delay, could, in easy blanket manner, be shifted over to the party who has the initial burden in the action, especially with the successive replacements of the District Judges, which took place in our action.

That has thus been an unfortunate aspect of this case, while Plaintiff has been systematically been resisted and delayed in essential examinations before trial, and endeavors at discovery for preparation of an anti-trust case.

The Court will understand, that, in such an action in large measure, evidence must be developed, if plaintiff is to be most effective, from the mouths of the actors in the alleged secret conspiracy, to destroy the plaintiff, operating as they do in a deep well of secrecy, buried in layers of conspiracy.

For, it must be said that these defendants themselves have already been found and established in prior Federal cases, as past masters in the use of secret tactics and tricks for the defeat of the anti-trust laws.

Hon. Marvin E. Frankel

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Our burden therefore, inherently, a heavy one, apart from those acts and actions of the defendants' counsel, for their powerful clients, should, in the present situation, be considered at this juncture.

They should not be permitted to escape their obligations to full discovery, with the essence being sacrificed to speed. Your Honor has now twice declared that a trial herein will be necessary, undoubtedly in due recognition of its importance, we submit.

Our letters of record, it will also be seen, have repeatedly over the years, have complained of the obvious deliberate tactic of delay, being employed against us. Having tied our hands, they have sought to obtain a dismissal of our action.

One example of the tactics employed by the defendants in unison, which has held this case up for perhaps a year or more, is in connection with their sudden cry, that an old omnibus stay issued out of the ANCORP bankruptcy proceedings in this Court, required this District Judge to accordingly terminate this action.

When the matter was, by Judge Carter's decision thereon, of June 5th, 1974, referred then back to the Bankruptcy Court, for us to make a motion to remove the stay, the defendants failed to oppose the application.

In that order of June 5th, 1974, Judge Carter also ordered, that all of our then pending motions, uncompleted pre-trial discoveries and the awaited rulings therein, and the timings thereof, should be "quote" adjusted.

It is that readjustment, which we are now seeking, as to those unhad items pending before Judge Carter, from your Honor, as his coordinate District Judge. That was the subject of our visit at Chambers with your law assistant, - as follows:

1. The unfinished testimony of Willie Levine.
2. The rulings demanded in our previous examinations before trial on objections by counsel, as appear in the minutes.
3. The unfinished examinations of the witnesses, Jack Underwood, and Henry Garfinkle.
4. The production of specific documents demanded, in the respective testimonies, referred to therein.

Hon. Marvin E. Frankel

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April 26, 1975

5. The unfinished testimony of William McCullough, Pres. of Ancorp, and American News, defendants.
6. The testimony now, of Myron Garfinkle, successor Chairman and Chief Operating Officer of defendant Ancorp, (son of his defendant-father Henry Garfinkle); made necessary by the most recent testimony of Pres. William McCullough.
7. Amongst documents demanded are:

- (a) The Bill of Sale from the New York Mirror to the defendant New York News, Inc., covering Mirror's assets, good will, right to publish etc, (said document being basic to plaintiff's case.)
- (b) The minutes of the meetings of the Board of Directors of defendants Ancorp, and American News, for years 1968 through 1972 inclusive,
- (c) The minutes of the defendant New York News, Inc., meetings of its Board of Directors, relative to its competitor, the Plaintiff, covering years 1965 - 1972 inclusive,

Before closing, it should be noted, that at the time, District Court Judge Owens, as the second judge, herein, withdrew, he was demanding from Roy Cohn Esq. and his counsel at Court, Jeff Shullman Esq., (now also official counsel of defendant Ancorp.), a memorandum to be furnished to the Judge, on the issue of the disqualification of Mr. Cohn and his law firm as adversary attorneys herein, on the undisputed fact that Mr. Cohn had been consulted by the Plaintiff to be retained as its counsel herein, and that he had been an important witness for the plaintiff to the events at issue herein.

In the light of all of the foregoing, your Honor, we trust, will understand our urgent sense of need in requesting a reconsideration of the timings, and adjustment thereof to the decision of Judge Carter, and the obvious requirements of our case for trial.

Respectfully yours,

Robert W. Farrell

cc: Copies to All Counsel

LETTER FROM MARK D. GERAGHTY TO HONORABLE MARVIN E. FRANKEL
DATED APRIL 29, 1975

57sa

JAMES W. RODGERS
JOHN R. SCHOEEMER, JR.
THOMAS P. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PAKULA
RONALD S. DANIELS
RICHARD J. BARNES
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JOHN PAUL PEINER
PHILIP S. OLICK
MARK D. GERAGHTY
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

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MICHAEL S. BELOHLAVEK
FREDERICK D. BERKON
JESSE H. BRENNER
JOHN M. CALLAGY
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TERENCE J. LYNCH
ROBERT C. MANGONE
SLADE R. METCALF
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J. HOWARD CARTER

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(212) MURRAY HILL 2-4867

CABLE TUCARRO

TELEX NO. 12-7815

April 29, 1975

Hon. Marvin E. Frankel
United States District Judge
United States District
Courthouse
Foley Square
New York, New York

Re: Daily Mirror, Inc. v. New York News,
Inc., et al. Index No. 71 Civ. 1211

Dear Judge Frankel:

The Court has invited responses to Mr. Farrell's letters of April 21, 1975 and April 26, 1975.

We do not believe it necessary to comment upon the April 21, 1975 letter.

With respect to the April 26, 1975 letter, comment, unfortunately extensive, is required.

This firm has requested two alterations of the briefing schedule relating to our proposed motion for summary judgment. Both requests were made because of a short delay in the taking of two depositions directed by the Court. We are advised that the transcripts of these two depositions will not be available until Friday of this week. Assuming we have the transcripts in hand by that date we will file our motion papers on May 5, 1975 as directed by the Court. If the deposition transcripts are not available by Friday, we will advise the Court and seek guidance.

Turning first to Mr. Farrell's accusation that defendants have impeded his discovery, the following is a brief summary of the proceedings in this action. From that summary we are

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certain that the Court can draw its own conclusions as to so much of Mr. Farrell's letter which charges the defendants with delay:

(a) The summons and complaint was served on approximately March 18, 1971.

(b) Defendant New York News Inc. answered on April 7, 1971 and on the same day served twenty-two pages of interrogatories. The other defendants answered on April 12, 1971.

(c) Plaintiff served answers to the interrogatories on July 31, 1973, after a direction from a Judge of this Court at a pre-trial conference held on June 21, 1973. (Those answers were two pages in length and stated in substance that the plaintiff had no facts within his own knowledge to support the allegations of his complaint.)

(d) Depositions of defendant New York News Inc. by one officer and one employee-manager (four sessions), defendant Henry Garfinkle (three sessions) and two partners in my firm (two sessions) were conducted by plaintiff between July 30, 1973 and February 22, 1974.

(e) We served further interrogatories on February 4, 1974 which were answered on March 1, 1974. (Again plaintiff stated in substance he did not have and had not developed evidence to support his claim.)

(f) At a pre-trial conference held on February 28, 1974 Judge Carter of this Court directed that all discovery be concluded by April 12, 1974.

(g) Plaintiff served interrogatories on New York News Inc. on April 4, 1974. Answers and objections to the interrogatories were served on May 3, 1974. Plaintiff has never made any motion pursuant to Rule 37 of the Federal Rules of Civil Procedure with respect to those interrogatories which were the subject of objections.

(h) On April 12, 1974, the date on which discovery was to have been concluded, plaintiff moved for leave to take the deposition of three individuals. Defendants opposed the motion on a number of grounds. In connection with this motion defendant Ancorp asserted the existence of a general stay order in a bankruptcy proceeding and asked that all proceedings in the within action be stayed. We took no position on that application.

(i) On June 5, 1974 Judge Carter denied plaintiff's motion of April 12, 1974 without prejudice and invited plaintiff to seek an order vacating the stay in the bankruptcy proceeding.

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(j) Plaintiff made such a motion on June 18, 1974 and, there being no opposition, plaintiff's motion was granted on September 12, 1974.

(k) On October 10, 1974 Judge Carter wrote to all counsel advising that he had received a letter from Mr. Farrell dated September 30, 1974 (apparently advising the Court of the determination of the bankruptcy court) and stating that he would treat that letter as an application on the part of the plaintiff to renew its motion for additional discovery made on April 12, 1974. We opposed Mr. Farrell's relief for further discovery and on November 15, 1974 Judge Carter entered an order denying plaintiff's motion for additional discovery.

(l) On March 4, 1975 plaintiff made a motion for leave to reargue its motion of April 12, 1974 seeking discovery. This Court denied the motion but on March 25, 1974 directed that the depositions sought by plaintiff in his motion of April 12, 1974 be taken in connection with the prospective motion for summary judgment. All depositions were taken by April 15, 1974. In order to meet the Court's direction, this firm and not Mr. Farrell arranged for all of the depositions.

The foregoing is a full history of the proceedings in this action.

This firm has never obstructed plaintiff's counsel in any way in his pursuit of information and opposed plaintiff's last effort for additional discovery only because it appeared obvious to us that the additional depositions sought would have no probative value in this lawsuit. We believe that a review of the transcripts of the three depositions in question will confirm our predictions.

In the fourth paragraph of the second page of his April 26, 1975 letter Mr. Farrell states that "the defendants in unison" held up this case for "a year or more" asserting a stay in bankruptcy proceedings involving Ancorp. As Mr. Farrell very well knows, defendant New York News Inc. took no position when, in response to Mr. Farrell's motion of April 12, 1975, Ancorp asserted a bankruptcy stay order as a reason for not proceeding with this action. Moreover, it was only a little more than three months after Judge Carter suggested that Mr. Farrell go to the Bankruptcy Court for an order permitting him to proceed in this action that he obtained such an order. Thus the delay occasioned by Judge Carter's June 5, 1974 decision was only three months. Indeed, it should be noted that

Hon. Marvin E. Frankel

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after Judge Carter denied Mr. Farrell's renewed motion for additional discovery on November 15, 1974, Mr. Farrell made no further efforts in this litigation until his motion of March 4, 1975 seeking to reargue his April 12, 1974 motion.

In the next paragraph of his letter Mr. Farrell refers to Judge Carter's order of June 5, 1974 (a copy of which is attached to this letter). Mr. Farrell has provided this Court with a completely distorted version of that order. It is perfectly plain that all that Judge Carter did by his order of June 5, 1974 was to indicate that in the event plaintiff's motion was renewed and in the event it was granted he would adjust the discovery schedule which he established in the previous February.

It is difficult, indeed, to come to grips with Mr. Farrell's plea for additional discovery. Certainly we object to further harassment of our client at this juncture of the litigation through frivolous attempts by Mr. Farrell to avoid a day of reckoning, and we oppose further discovery for that reason if for no other.

However, viewing the request substantively and recognizing that claims of frivolousness must be measured against the record of plaintiff's performance in discovery proceedings to date, we would respectfully suggest that the Court defer considering Mr. Farrell's request for further discovery until the moving papers on our motion for summary judgment have been filed.

We believe the Court will have before it at that time, which is only a week away, a sufficiently clear picture of the status of this lawsuit to make a fully informed judgment on the question of whether the interests of justice would be served if Mr. Farrell's request were granted.

Certainly if more discovery is warranted here, and we think it is not, it should be limited to very specific subject matter.

If the Court wishes to dispose of Mr. Farrell's requests at this juncture, we will deal as best we can, but briefly, with the items listed in his letter:

(a) With respect to items 1, 5 and 6, the necessity of additional testimony from Mr. Levine and Mr. McCullough as well as the taking of a deposition of Myron Garfinkel can only be considered after a review of the transcripts of the testimony of Mr. Levine and Mr. McCullough which were taken on April 15, 1975. Those transcripts are not available as of this date but will be filed with the Court in connection with our motion for summary judgment. However, having participated in the depositions I am

Hon. Marvin E. Franekl

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convinced that there is no need to continue them or to take the deposition of Mr. Garfinkle. In this connection I'm providing the Court with a copy of a letter written to Mr. Farrell and Mr. McCullough's attorney that dealt with one area of testimony that was not pursued in Mr. McCullough's testimony.

(b) With respect to item 2, it should be noted that Mr. Farrell has never sought any rulings with respect to any of the testimony given in depositions.

(c) With respect to item 3, it is the position of defendant New York News Inc. that the deposition of Mr. Underwood has long since been concluded. The last session of Mr. Underwood's deposition was held on October 5, 1973 and no effort has been made since that date to continue it. The last deposition of Mr. Garfinkle was taken at about the same time. Insofar as Mr. Garfinkle is concerned I have read the transcripts of the three sessions in which he was questioned. The repetition of questions in those three sessions is very noticeable. There seems no reason at all for continuing Mr. Garfinkle's testimony.

(d) With respect to item 4, plaintiff has never made a demand for the production of documents in this case. As to documents requested during the course of depositions, we have supplied those documents or have advised Mr. Farrell long ago of the reasons why it would not produce such documents.

(e) With respect to item 7, we assume that Mr. Farrell is now seeking for the first time the documents described in subparagraphs (a), (b) and (c).

We are at a loss to understand what relevancy the bill of sale from the "New York Mirror to the New York News Inc." covering an acquisition of the assets of the old Daily Mirror (which is unrelated to Mr. Farrell's publication) which occurred in 1963 can possibly have in this lawsuit which deals with events occurring in 1971. With respect to Mr. Farrell's request for minutes of meetings of the Board of Directors of New York News Inc. in the years 1965 to 1972 relative to plaintiff we fail to understand why a demand for these minutes was not made long ago if plaintiff deems them relevant to the issues in this litigation. However, we will cause a review to be made of the minutes of Board of Directors meetings of the News for the period in question and shall, in connection with our motion for

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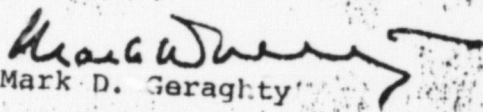
Hon. Marvin E. Frankel

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April 29, 1975

summary judgment, either submit an affidavit identifying any references in minutes of Board of Directors meetings to Mirror or, if no such references exist, state that fact.

We make no comments with respect to the penultimate paragraph on page 3 of the April 26, 1975 letter.

Respectfully,


Mark D. Geraghty

MDG:ecp
Enclosures

Copies to all counsel

LETTER FROM MARK D. GERAGHTY TO ROBERT W. FARRELL DATED
APRIL 29, 1975

63sa

TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

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TERENCE J. LYNCH
ROBERT C. MANGONE
BLADE R. METCALF
RAYMOND J. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

REGISTERED MAIL
RETURN RECEIPT REQUESTED

April 29, 1975

Robert W. Farrell, Esq.
110 Old Country Road
Mineola, New York 11501

Re: Daily Mirror, Inc. v. New
York News Inc., et al.

Dear Mr. Farrell:

In connection with our motion for summary judgment in the above-entitled action which will be served and filed on Monday, May 5, 1975 it is our intention to supply Judge Frankel with copies of all exhibits marked for identification in the depositions which you have taken to date.

In view of the foregoing I would appreciate it if you would provide this firm with xerox copies of the following exhibits which were marked for identification in your depositions:

1. In the deposition of Mr. Underwood conducted on October 5, 1973 the following described exhibits:

- ✓ (a) Exhibit 1 - Blank form, circulation representatives report.
- ✓ (b) Exhibit 2 - Interoffice correspondence dated January 12, 1971.
- ✓ (c) Exhibit 3 - Copy of list of trustees of McCormick-Patterson Trust.
- ✓ (d) Exhibit 4 - List of preferred stockholders of New York News, Inc. consisting of two pages.

James W. Farrell, Esq.

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April 29, 1975

2. In the deposition of Mr. Kane conducted on October 16, 1973 the following described exhibits:

- ✓ (a) Exhibit 5 - Copy of document headed "Archie Gordon, employee No. 921-24020".
- ✓ (b) Exhibit 6 - Copy of three-page document entitled "McCormick-Paterson Trust Unit of Beneficial Interest," dated March 2, 1973.

3. In the deposition of Mr. Rodgers conducted on December 21, 1973 the following described exhibits:

- ✓ (a) Exhibit 1 - Two-page letter on the letterhead of Townley, Updike, Carter & Rodgers, dated 8/31/65.
- ✓ (b) Exhibit 2 - Two-page original letter on the letterhead of Townley, Updike, Carter & Rodgers, dated 3/16/71.

We have not yet received the transcript of Mr. Gordon's deposition which we understand was delivered to you last week. We would appreciate receiving immediately a copy of the transcript of said deposition and xerox copies of the two exhibits marked in that deposition, those exhibits being (a) a copy of my letter to you dated April 1, 1975 and (b) your responding letter to me.

With respect to the depositions of Mr. Levine and Mr. McCollough we have communicated with Adler Reporting Service and have been advised that the transcript of those depositions will be available on Friday of this week. We would appreciate it if you would communicate with Adler Reporting Service and indicate to them that they may deliver directly to us our copies of those deposition transcripts. We will make arrangements directly with Adler to pick up transcripts on Friday provided they are prepared.

As you will recall in the McCollough deposition you marked for identification two newspaper articles. As I recall it these were the only exhibits marked for identification in the McCollough deposition. We request that you provide us with xerox copies of those articles at which time we will have, as far as our records disclose, a full set of all exhibits marked in the depositions in this litigation.

Robert W. Farrell, Esq.

3

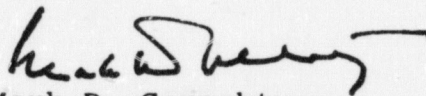
April 29, 1975

It is imperative that we have your cooperation in this matter and I would appreciate a telephone call from you upon receipt of this letter confirming that we will have your cooperation.

I will be out of the country on Thursday and Friday of this week. In the event you do not receive this letter before my departure or do not have an opportunity to call me before I leave the country, would you please communicate with Frederick D. Berkon, Esq. of this office who is familiar with this matter.

Finally, we presume that you have filed with the Court the signed original transcripts of all depositions conducted in this lawsuit with the exception of the Levine and McCollough transcripts. If we are in error in this regard would you please arrange to file the executed transcripts immediately and advise us when this has been done.

Sincerely,



Mark D. Geraghty

MDG/cs

cc: Judge Frankel
All Counsel

LETTER FROM MARVIN E. FRANKEL TO ROBERT W. FARRELL DATED
MAY 1, 1975

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
NEW YORK, N. Y. 10007

66sa

May 1, 1975

CHAMBERS OF
JUDGE MARVIN E. FRANKEL

Robert W. Farrell, Esq.
67 Park Avenue
New York, N.Y. 10016

Re: Daily Mirror Inc. v. New York News, Inc., et al,
71 Civ. 1211

Dear Mr. Farrell:

This refers to another of your lengthy letters,
this one dated April 26, 1975.

I have tried to make clear to you before now that the
court will look with utter disfavor on further attempts
to expand and continue discovery which should have been
completed long ago in this very ancient case. I remind
you of that basic principle now.

As to the several requests enumerated in your
letter, they are all denied with one exception. The
defendant, New York News, Inc., should treat this letter
as a direction to allow you to see the Bill of Sale
requested in your item 7(a).

Beyond this direction, you are entitled to no
relief at this time. If and when you believe relief is
warranted, you must proceed by proper motion papers,
with suitable affidavits, bearing in mind throughout the
very slim likelihood that any further discovery will be
allowed before this case goes to trial.

Very truly yours,

Marvin E. Frankel
Marvin E. Frankel

cc: To All Counsel

LETTER FROM ROBERT W. FARRELL TO HONORABLE JUDGE MARVIN
E. FRANKEL DATED MAY 3, 1975

67sa

ROBERT W. FARRELL
ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-6245

NEW YORK CITY OFFICE
67 PARK AVE. N. Y. C. 10016
212-688-0346

May 3rd, 1975

Hon. Judge Marvin E. Frankel
United States District Court
Foley Square, New York 10007

Re; Daily Mirror Inc.,/
New York News Inc., et al.

Dear Judge Frankel:

Enclosed you will find a copy of our letter,
dated May 3rd to Townley, Updike, Carter and
Rodgers Esq., which speaks for itself, espec-
ally in the light of our letter concerning
delay, to your honor dated April 26th.

We shall comply with your Honor's direction
to proceed by motion for the restoration of
those rights which your colleague Judge
Carter suspended, awaiting our return from
the Bankruptcy Court.

Very truly yours,
Robert W. Farrell
Robert W. Farrell

rwf/ms

cc. Townley, Updike Carter & Rodgers Esq.

LETTER FROM ROBERT W. FARRELL TO TOWNLEY, UPDIKE, CARTER &
RODGERS, DATED MAY 3, 1975 WITH ENCLOSURE

ROBERT W. FARRELL

ATTORNEY AT LAW

68sa

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8245

NEW YORK CITY OFFICE
37 PARK AVE. N. Y. C. 10016
212-685-9346

May 3rd, 1975

Townley, Updike, Carter & Rodgers Esqs.
220 East 42nd Street
New York, N.Y. 10017

Re; Daily Mirror Inc.,/
New York News Inc., etal.

Gentlemen:

I am promptly rejecting, and therefore
returning to you, your enclosed paper
(13 pgs) as not a compliance with the
District Court's direction as of May
1st, 1975.

The Court's direction was and is:

"to allow you to see the Bill
of Sale, requested in your item 7
(a).

Very truly yours,

Robert W. Farrell
Robert W. Farrell

rwf/ms

cc; Hon. Marvin E. Frankel

(33)

(f) All of the Mirror's prepaid subscription contracts and lists as provided for in paragraph 3 hereof; and

(g) Such rights as Hearst may have in the Mirror promotion programs and activities and circulation contests, excluding the National Sports, Vacation & Travel Show and the Mirror Welfare Fund Dinner now scheduled for October 27, 1963.

To the extent that such assets consist of tangible personal property, Hearst will effectuate such sale by executing and delivering to News a bill of sale, containing a warranty of title, giving full and complete title thereto, free and clear of all liens and encumbrances. To the extent that such assets consist of intangible property, Hearst will effectuate such sale by executing and delivering to News an instrument or instruments of assignment transferring all of its right, title and interest thereto, free and clear of all liens and encumbrances. To the extent that the consent or consents of third parties may be required to render such assignment fully effective, Hearst will use its best efforts to secure such consent or consents.

2. Consideration. The consideration is

?

payable by News to Hearst ~~on the closing~~

Date.

3. Subscription Contracts and Lists. Immediately following the Effective Date, Hearst will make available to News information concerning, and thereafter will assign, transfer and

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(attention G. O. Markuson) at 959 Eighth Avenue, New York 19, New York, and to News (attention F. M. Flynn) at 220 East 42nd Street, New York 17, New York; and that this Agreement will be binding upon the parties hereto and their respective successors and assigns.

The parties hereto represent each to the other that it ~~has~~
taken no action nor made any commitment which would involve a
broker's commission with respect to the transactions contemplated/
herein.

Except to the extent of discharge by performance, the rights and liabilities of the parties hereto will survive the Closing and Effective Date hereunder and continue until discharged by performance.

This Agreement constitutes the entire understanding of the parties and cannot be waived, changed, discharged or terminated except by an agreement in writing signed by the party against whom the enforcement of any waiver, change, discharge or termination is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement
as of the day and year first above written.

~~Attest:~~

Assistant Secretary

~~Test:~~

Secretary

~~THE HEARST CORPORATION~~

By _____
President

~~NEWS SYNDICATE CO. INC.~~

By _____
President

LETTER FROM MARK D. GERAGHTY TO HONORABLE MARVIN E. FRANKEL DATED
MAY 5, 1975

TOWNLEY, UPDIKE, CARTER & RODGERS

71sa

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CABLE: TUCARRO
TELEX: NO. 12-7815

May 5, 1975

Hon. Marvin E. Frankel
United States District Judge
United States District
Courthouse
Foley Square
New York, New York

Re: The New York Mirror v. The New York News, Inc.
et al. Civil Action Index No. 71 Civ. 1211 (MEF)

Dear Judge Frankel:

We have this day served and filed a Motion for Summary Judgment on behalf of defendant, New York News, Inc., seeking dismissal of the complaint in the above-entitled action, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

In paragraph 11(c) of my affidavit filed in support of the motion I refers to documents marked for identification in the depositions conducted by plaintiff which I state are attached as Exhibit I to the Appendix which we have filed in connection with the motion for summary judgment. The Appendix, as filed today, does not contain the fourteen documents referred to in my affidavit.

The reason for this is that the documents comprising the Exhibit in question are in the possession of counsel for plaintiff, Robert W. Farrell, Esq., and have not been forwarded to us despite our request that he provide copies of such documents so that they could be included in the Appendix.

I am enclosing a copy of our letter to Mr. Farrell of April 29, 1975, which sets forth the request referred to above.

In addition, as the court will note, our April 29, 1975 letter requested that Mr. Farrell deliver to us the transcript of Mr. Gordon's

Hon. Marvin E. Frankel

2

May 5, 1975

deposition which was conducted on April 7, 1975. We have not received that transcript.

Indeed, we must advise the Court that Mr. Farrell has failed to respond to our letter of April 29, 1975 and for that reason we do not know at this time if the original transcripts of the depositions conducted in this action have been filed with the court.

Finally, we feel it appropriate to call to the Court's attention the fact that we requested Mr. Farrell's cooperation in expediting the delivery to this firm of copies of the transcripts of the depositions of Mr. Levine and Mr. McCollough so that there would be no further delay in the filing of our motion for summary judgment. I am advised by Mr. Berkon of my office that he communicated with Adler Reporting Service on Friday, May 2, 1975. At that time, Adler Reporting Service advised Mr. Berkon that they were under an obligation to transmit the deposition transcripts and all copies directly to Mr. Farrell and agreed to deliver copies to us only if we agreed to accept financial responsibility for the copies of the deposition transcripts that would be delivered to us. In order to be able to comply with the Court's direction to file our motion by the end of the business day today, we agreed to Adler's request.

By reason of the foregoing conversation between Adler Reporting Service and Mr. Berkon it is clear that Mr. Farrell did not honor the request contained in our April 29, 1975 letter that he communicate with Adler Reporting Service in order to authorize them to deliver a copy of the transcript directly to us.

We will continue to make efforts to obtain the cooperation of Mr. Farrell which we requested in our April 29, 1975 letter but, in any event, will within the next several days attempt to supply the Court with copies of all documents which were marked for identification in the depositions conducted by plaintiff. Since Mr. Farrell has had in his possession all of the executed original transcripts of testimony except for the transcripts of the depositions of Mr. Gordon, Mr. Levine and Mr. McCollough, which have only recently been taken and of which we have no knowledge, we can only point out to the Court our efforts to insure proper filing of these transcripts.

I am constrained to state that Mr. Farrell's lack of professional courtesy in responding to our letter of April 29, 1975 is causing

73sa

Hon. Marvin E. Frankel

3

May 5, 1975

this firm both unnecessary expense and inconvenience in complying with the directions of this Court.

Respectfully,

Mark D. Geraghty

MDG/PT
Enclosures

Copies to all counsel

LETTER FROM TOWNLEY, UPDIKE, CARTER & RODGERS TO ALL COUNSEL
DATED MAY 5, 1975

TOWNLEY, UPDIKE, CARTER & RODGERS

74sa

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

STUART N. UPDIKE
J. HOWARD CARTER
COUNSEL

TELEPHONE
(212) MURRAY HILL 2-4567

CABLE: TUCARRO
TELEX: NO. 12-7815

JAMES W. RODGERS
JOHN R. SCHOEMER, JR.
THOMAS P. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PAKULA
RONALD S. DANIELS
RICHARD J. BARNES
RICHARD R. LUTZ
JOHN PAUL REINER
PHILIP S. OLICK
MARK D. GERAGHTY
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

WILLIAM A. ALPER
MICHAEL S. BELOHLAVEK
FREDERICK D. BERKON
JESSE H. BRENNER
JOHN M. CALLAGY
RICHARD J. CODDING
RICHARD C. CONOVER
DOUGLAS C. FAIRHURST
PETER C. GOULD
SPENCER C. HUNT
PHILIP L. KIRSTEIN
JAMES K. LEADER
TERENCE J. LYNCH
ROBERT C. MANGO'E
SLADE R. METCALF
RAYMOND J. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS

May 5, 1975

Robert W. Farrell, Esq.
67 Park Avenue
New York, New York 10016

Barret W. Kreisberg, Esq.
104 East 40th Street
New York, New York

John Lang, Esq.
Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York

Re: Daily Mirror, Inc. v. New York News,
Inc., et al., Index No. 71 Civ. 1211

Gentlemen:

You will note that the return date of our Motion for Summary Judgment which was served today is May 27, 1975. The change in the return date from May 26, 1975, as originally directed by the Court, results from the fact that May 26, 1975 is a holiday, a fact which I neglected to take into account in my request to Judge Frankel for a final adjustment of the briefing schedule. Mr. Ward, Judge Frankel's law clerk has advised me that the Court agrees to the foregoing change in the return date which shall also be the day on which reply papers should be filed. The foregoing modification does not, as we understand it, affect the date by which plaintiff must file answering papers.

Sincerely,


Mark D. Geraghty

MDG/cs

cc: Judge Frankel

MEMORANDUM OF JUDGE MARVIN E. FRANKEL DATED MAY 6, 1975

75sa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

DAILY MIRROR, INC., :

Plaintiff, :

-against- :

NEW YORK NEWS INC., et al., :

Defendants. :

- - - - - x

71 Civ. 1211

MEMORANDUM

FRANKEL, D.J.

The court is being favored in this case with a barrage of correspondence, all seemingly triggered by the court's explicit direction that the case should be prepared speedily for trial or some other form of final disposition. Much of the correspondence is bitter. Much of it reflects personal acrimony between counsel and regrettable refusals to cooperate in familiar ways for the effectuation of discovery and other aspects of pretrial preparation.

Events of this nature drive all of us toward confrontations we should all desire to avoid. The court expects the members of our bar to cooperate in the discharge of their professional responsibilities. The court expects that documents will be exchanged, depositions delivered, and other courtesies shown in

traditional fashion. If this expectation is disappointed, the court must consider measures of a disagreeable nature.

It is to be hoped that no such measures will need to be contemplated. If, despite this cautionary memorandum, the pattern of unseemly contention is extended, any counsel deeming himself or his client aggrieved, should make a formal motion seeking the full measure of any relief deemed to be appropriate. The court will consider the full range of available sanctions against counsel or client or both to remedy the unsatisfactory situation that has heretofore existed. Again, the court expresses the hope that no measures of this nature will prove necessary.

Dated, New York, New York

May 6, 1975

MARVIN E. FRANKEL

U.S.D.J.

LETTER FROM ROBERT W. FARRELL TO HONORABLE MARVIN E. FRANKEL

DATED MAY 10, 1975
ROBERT W. FARRELL

ATTORNEY AT LAW

77sa

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8245

NEW YORK CITY OFFICE
67 PARK AVE. N. Y. C. 10016
212-685-9346

May 10th, 1975

Hon. Marvin E. Frankel
United States District Court
Southern District
Foley Square, N.Y. 10007

Dear Judge Frankel:

71 CIV1211
Daily Mirror Inc.,/
New York News Inc., et al.

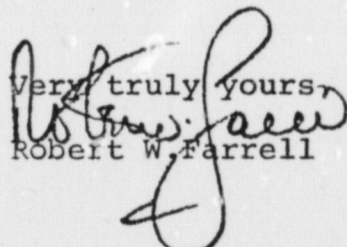
Frankly, I am unable to pull myself out from under the avalanche of the latest correspondence of my adversary Mr. Geraghty.

By-passing, without response, our severe indictments of the series of tactical delays, (e.g., one of a year's length, Ancorp bankruptcy stay), and now by-passing his latest non-compliance with your Honor's order for the delivery of the crucial "Bill of Sale."

He has written still another voluminous letter, directly on the heels of this Court's stinging memorandum dated May 6th, 1975, after your Honor had mistakenly misplaced at our door, "another of your lengthy letters, this one dated April 26th, 1975" dated May 1st.

I think the occasion now calls for an all pre-dispositive and realistic conference of counsel, in this action, which is pregnant with a wide public significance; especially now, that your Honor has ordered to us that crucial Bill of Sale.

It had been withheld from us for the last few years, and now is still being withheld, notwithstanding your Honor's order, in significant portions.

Very truly yours,

Robert W. Farrell

rwf/ms
cc All Counsel

LETTER FROM MARVIN E. FRANKEL TO ROBERT W. FARRELL, TOWNLEY,
UPDIKE, CARTER & RODGERS, SAXE, BACON, BOLAN & MANLEY AND
BARRETT KREISBERG, DATED JUNE 2, 1975

78sa

UNITED STATES DISTRICT COURT

UNITED STATES COURTHOUSE

NEW YORK, N. Y. 10007

June 2, 1975

CHAMBERS OF
JUDGE MARVIN E. FRANKEL

Robert W. Farrell, Esq.
67 Park Avenue
New York N.Y. 10016

Townley, Updike, Carter & Rodgers, Esqs.
220 East 42nd Street
New York N.Y. 10017 Attn: Mark D. Geraghty, Esq.

Saxe, Bacon, Bolan & Manley, Esqs.
39 East 68th Street
New York N.Y. 10021

Barrett Kreisberg, Esq.
104 East 40th Street
New York N.Y. 10016

Re: Daily Mirror Inc. v. New York News, et al.,
71 Civ. 1211

Gentlemen:

As you know, the plaintiff, after seeking extensions of time, has filed no response to the pending motion for summary judgment. I am advised by my law clerk, Mr. William J. Perlstein, that Mr. Farrell stated last week that he had filed papers (at 3:30 p.m. on May 29), seeking at this late date to have me recuse myself on grounds that are not yet apparent to me. Those papers, as this is dictated (at 2:30 p.m. on June 2, 1975), appear not to have been filed. The result is a state of maximum uncertainty and potential confusion for all concerned.

In these circumstances, the problem of prediction and scheduling for both court and counsel is exceedingly difficult. It may well be that the complaint is soon to be dismissed on the granting of summary judgment against the defaulting plaintiff. It is conceivable that Mr. Farrell has grounds of which I am wholly unaware

-2-

for effectively demanding my withdrawal. Having in mind that this is a case under the emergency program recently inaugurated by the court for cases of such ancient vintage, I shall plan to proceed with the utmost possible speed and fairness in this somewhat troublesome situation. You may be certain that I shall be turning to the motion for summary judgment within the next day or two. I shall, of course, give full attention to any motion by Mr. Farrell if and when he succeeds in submitting it. In the meantime, it seems only fair to counsel for defendants to announce that the trial date, long ago fixed at June 9, 1975, must now be postponed to June 16, 1975, again subject to such eventualities as may hereafter appear.

Very truly yours,

Marvin E. Frankel
Marvin E. Frankel

LETTER FROM ROY COHN TO HONORABLE MARVIN E. FRANKEL DATED
JUNE 2, 1975

80sa

Saxe, Bacon, Bolan & Manley

39 EAST 68TH STREET
NEW YORK, NEW YORK 10021

JOHN GODFREY SAXE (1909-1953)
ROGERS H. BACON (1919-1962)

(212) 472-1400

THOMAS A. BOLAN
COUNSEL

ROY M. COHN
SCOTT E. MANLEY (ADMITTED ILLINOIS AND INDIANA)
MICHAEL ROSEN
DANIEL J. PRISCOLL

June 2, 1975

Honorable Marvin Frankel
United States District Judge
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: Daily Mirror, Inc. v. New York News, Inc. et al.

Dear Judge Frankel:

At this time we respectfully request that we be allowed to join in the motion brought by the defendant New York News, Inc. for summary judgment dismissing the plaintiff's complaint pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure.

Furthermore, we respectfully associate ourselves with the positions urged by Mark Geraughty, Esq. in his supplemental affidavit in support of defendant's motion for summary judgment, and in his affidavit in opposition to plaintiff's motion for further discovery and other relief, both sworn to the 23rd day of May, 1975.

Respectfully,

SAXE, BACON, BOLAN & MANLEY, P.C.

Roy M. Cohn

Roy M. Cohn

sb

LETTER FROM BARRETT G. KREISBERG TO HONORABLE MARVIN E.
FRANKEL DATED JUNE 4, 1975

81sa

BARRETT G. KREISBERG
COUNSELOR AT LAW
104 EAST 40TH STREET
NEW YORK, N.Y. 10016
212-667 3380

WESTCHESTER OFFICE
616 CHESTER AVENUE
WHITE PLAINS, N.Y. 10601

914-418-3000

PLEASE RESPOND TO White Plains,
N.Y.

June 4, 1975

Honorable Marvin E. Frankel
United States District Judge
United States District Court
Foley Square
New York, N.Y. 10007

Re: Daily Mirror Inc. vs. New York News, et al., 71 Civ. 1211

Dear Judge Frankel:

Enclosed you will find an affidavit in connection with the plaintiff's application pursuant to Section 144 and 445 titled 28 USC on behalf of the defendant Henry Garfinkle.

It appears that the plaintiff has failed to file any answers in connection with the summary judgment motions which were returnable before this Court on May 27, 1975, and that the plaintiff is in default on said motion although the Court granted extensions of time as referred to in your letter of June 2, 1975 addressed to all counsel.

The defendants' motions fully set forth all of the facts relating to the subject matter of this case and indicate that there are no issues to be tried by the Court. The defendant has had close to 4 years to obtain all evidence available to substantiate its point of view. The fact that the plaintiff has not put in any answer, or, raised any issue other than its dilatory motion seeking further examination and other relief, would indicate that the plaintiff has no evidence within which to respond to the moving papers on the summary judgment motion.

The undersigned stands ready to abide by Your Honor's decision on any of the matters currently before you.

Respectfully yours,

Barrett G. Kreisberg

LETTER FROM ROBERT W. FARRELL TO TOWNLEY, UPDIKE, CARTER
& RODGERS DATED JUNE 6, 1975
ROBERT W. FARRELL
ATTORNEY AT LAW

82sa

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8248

NEW YORK CITY OFFICE
67 PARK AVE N. Y. C. 10018
212-685-9340

June 6th, 1975

Townley, Updike, Carter & Rodgers Esqs.
220 East 42nd Street
New York, N.Y. 10017

71 CIV 1211

Re; Daily Mirror Inc.,/
New York News Inc., et al.

Gentlemen:

I am in receipt of affidavit of your Mr. Geraghty, dated June 6th, 1975 together with a letter same date addressed to the Hon. Judge Marvin E. Frankel, copy of same to me.

Enclosed herein, I am returning these documents to you, with a copy of this letter to Judge Frankel, with the statement that your affidavit and letter are not-pertinent to my application pursuant to Sec. 144 and 455 of Title 28 USC.

Sincerely,

Robert W. Farrell

rwf/ms
enclosed: letter dated 6/6/75
affidavit dated 6/6/75

LETTER FROM ROBERT W. FARRELL TO BARRETT G. KREISBERG, DATED
JUNE 6, 1975

ROBERT W. FARRELL
ATTORNEY AT LAW

83sa

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-0245

NEW YORK CITY OFFICE
67 PARK AVE. N. Y. C. 10016
212-688-9346

JUNE 6th, 1975

Barrett C. Kreisberg Esq.
104 East 40th Street
New York, N.Y. 10016

Dear Mr. Kreisberg:

Re; Daily Mirror Inc.,/
New York News Inc., et al.

I am in receipt of your letter dated June 4th, 1975
together with your Affidavit of same date; which you
forwarded to the Hon. Judge Marvin E. Frankel.

Enclosed herein you will find your affidavit and your
letter to Judge Frankel, which I am returning to you
as being not-pertinent to my proceeding under Sec. 144
and 455 Title 28 USC.

Sincerely,

R. W. Farrell
Robert W. Farrell

r fw/las
enclosed: Letter and
affidavit dated 6/4/75

cc : Hon. Marvin E. Frankel

84sa

LETTER FROM ROBERT W. FARRELL TO HONORABLE MARVIN E. FRANKEL
DATED JUNE 6, 1975 WITH ATTACHMENT
ROBERT W. FARRELL
ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
516-248-8248

NEW YORK CITY OFFICE
67 PARK AVE N. Y. C. 10019
212-685-9348

June 6th, 1975

Hon. Marvin E. Frankel
United States District Court
New York, N.Y. 10007

71 CIV 1211

Re: Daily Mirror Inc.,/
New York News, Inc. et al.

Dear Sir:

I am in receipt of the District Judge's unusual letter of June 2nd, 1975 addressed to all parties, said letter being sent, after word had already arrived at Chambers that application for your Honor's withdrawal had been duly filed with your Court's clerk (Mr. Becker) on Thursday, May 29th, 1975 at about 3:20 PM.

Our application, while it is by affidavit provided for under Section 144 Title 28 USC, in requirement of instant withdrawal, is also based upon the self-operative, self-initiative provisions of Section 455, same title, as now amended, which leaves the litigant before him, most uncomfortable and lacking confidence and faith in fairness of the Judge, employing the qualification standards set down by the Supreme Court in *Estes v Texas*, emphasizing the appearance, rather than the reality of justice, as a test, for withdrawal.

The revised statute 455, makes not the sense of duty in the Judge to continue to sit, a basis for resistance to the litigant's claim, but the sense of discomfort in the litigant, as a basis for the Judge's more likely obligation to withdraw.

It seems to us, that the Judge's response by letter of June 2nd, 1975 should better have waited the Judge's full receipt of the application of withdrawal and thus avoided the continuing appearances, which have brought on further discomfort. Your Honor's reference to the imminent possibility of "summary judgment" against the plaintiff, without any reference to our pending priority motion for EBT discoveries, as against the mere casual projection of a motion for summary judgment by defendant, accepted by your Honor, as a mere suggestion most casually made at that time, a further demonstration, that can only be deemed, aggravating judicial attitude, as it appears to us.

I am hastening to have this response to yours of June 2nd, delivered to your Chambers.

Very truly yours,
Robert W. Farrell
Robert W. Farrell

ICCMT 121454

NYDOT 7615

PRD. NO. M. 004132

WALSH

messenger service, inc.

4 THIRD STREET • GARDEN CITY PARK, N. Y. 11040

(516) 746-4348

(212) AT 1-2220

DATE

11/1/75

BONDED & INSURED

SHIP FROM				SHIP TO			
ROBERT W. EARROLL				DISTRICT COURT			
157 31				UNITED STATES COURT			
MIDDELER				ELIZABETH			
AUTOMOBILE, BY				AUTOMOBILE, BY			
RECEIVED, SUBJECT TO THE CLASSIFICATIONS AND TARIFFS IN EFFECT ON THE DATE OF THE ISSUE OF THIS BILL OF LADING.							
CHECK TYPE OF SERVICE	SCHEDULED	IMMEDIATE	MULTIPLE				
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
DESCRIPTION	ENVELOPES	CARTONS	PACKAGES	OTHER	OFFICE USE ONLY		
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
COMMODITY	PICK-UP DRIVER			DELIVERING DRIVER		TIME OF DELIVERY	
	157 31			157 31		A.M. P.M.	
THIS IS YOUR FREIGHT BILL.				THIS BILL MUST BE PAID WITHIN 7 DAYS ACCORDING TO THE DEPARTMENT OF TRANSPORTATION AND INTERSTATE COMMERCE COMMISSION REGULATIONS.			
Consignee Sign: X Walsh				No Initials Please			
TOTAL CHARGES				SERVICE			
COLLECT				WAITING TIME			
OTHER				OTHER			
MAXIMUM WEIGHT 100 LBS PER SHIPMENT				WT.			
SHIPMENT SENT PREPAID				UNLESS CHECKED COLLECT			
COLLECT				5.00			
WAITING TIME				5.00			
OTHER				5.00			
TOTAL CHARGES				5.00			

DELIVERY RECEIPT

LETTER FROM MARK D. GERAGHTY TO HONORABLE MARVIN E. FRANKEL

86sa

DATED JUNE 6, 1975
TOWNLEY, UPDIKE, CARTER & RODGERS

220 EAST FORTY-SECOND STREET

NEW YORK, N. Y. 10017

JOHN R. SCHOEMER, JR.
THOMAS P. TREDWAY
JOHN J. MACCHIA
EDWARD M. MAHER
WILLIAM P. HINDMAN, JR.
ANDREW L. HUGHES
PHILIP D. PARULA
RONALD S. DANIELS
RICHARD J. BARNES
RICHARD R. LUTZ
JOHN PAUL REINER
PHILIP S. OLICK
MARK D. GERAGHTY
JOHN D. CANONI
RICHARD C. KULLEN, JR.
JOSEPH F. KELLY, JR.

WILLIAM A. ALPER
RANDOLPH AMENGUAL
MICHAEL S. BELOHLAVEK
FREDERICK D. BERKON
JESSE H. BRENNER
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TERENCE J. LYNCH
ROBERT C. MANGONE
SLADE R. METCALF
FREDERIC R. MINDLIN
JOHN C. SCANNELL
RAYMOND J. SOFFIENTINI
EDWARD E. VASSALLO
ROGER E. WILLIAMS
GAYLE A. YEOMANS

STUART N. UPDIKE
J. HOWARD CARTER
JAMES W. RODGERS
COUNSEL

TELEPHONE
(212) MURRAY HILL 2-4567

CABLE: TUCARDIS
TELEX: NO. 12-7815

June 6, 1975

Honorable Marvin E. Frankel
United States District Court Judge
United States District Court for
the Southern District of New York
United States Court House
New York, New York 10007

Re: Daily Mirror, Inc. v.
New York News Inc., et al.

Dear Judge Frankel:

The Court has invited counsel for defendants to submit comments with respect to the application made by plaintiff pursuant to Title 28 U.S.C. §144 and Title 28 U.S.C. §455, asking the Court to recuse itself and with respect to the pending motion for summary judgment in this action. The plaintiff has never served its application and the supporting affidavit on this firm but we have been supplied a copy of these papers by the Court.

We have reviewed the affidavit of Robert W. Farrell, sworn to May 29, 1975, and filed in support of the above referred to application.

A reading of Mr. Farrell's affidavit shows that plaintiff's application is legally insufficient and that it is not made in good faith. It is apparent that plaintiff has filed the pending application solely for the purpose of delaying the final disposition of this action. Plaintiff has not demonstrated the existence of any grounds which should cause you to recuse yourself.

I am submitting an affidavit with that letter which deals with certain parts of Mr. Farrell's affidavit.

Honorable Marvin E. Frankel

2

June 6, 1975

Defendant New York News Inc. will not submit any further papers in support of its pending motion for summary judgment. We consider that motion fully submitted. We urge that the motion must be granted in the absence of some showing by plaintiff which has not as yet been made.

It appears that plaintiff's counsel has seized upon an argument that he requires additional discovery and, using that argument as a base, has chosen to ignore the pending motion for summary judgment and to instead embark on extraneous motion practice.

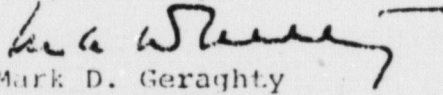
Rule 56 of the Federal Rules of Civil Procedure provides a procedure by which a party opposing a motion for summary judgment can, upon a proper showing, seek additional discovery for the purpose of demonstrating the existence of triable issues of fact.

As I have explained in my accompanying affidavit, plaintiff's counsel was aware of this procedure. If plaintiff's counsel had sought additional discovery pursuant to the provisions of Rule 56, this action could have proceeded in an orderly manner. Plaintiff's failure to follow this procedure is resulting in the expenditure of needless time and effort in dealing with unnecessary motion practice which is plainly calculated to impede the progress of this lawsuit.

We respectfully submit that plaintiff is ignoring his opportunity to seek discovery within the context of Rule 56 because its counsel knows it cannot show justification for more discovery.

If the Court is, for any reason, inclined to give plaintiff another opportunity to show that triable issues exist in this action which would defeat defendants' motion, we respectfully request that plaintiff be advised that it will only be entitled to seek further discovery in the manner provided by Rule 56.

Respectfully,


Mark D. GeraghtyMDG/es
Enclosure

cc: All Counsel (with encl.)

TELEGRAM FROM ROBERT W. FARRELL TO HONORABLE MARVIN E. FRANKEL DATED
JUNE 19, 1975

88sa



Telegram

YSB315 (2357) (2-053484E17Q) PD 06/19/75 2357
ICS IPMMTZZ CSP
2126859346 TDMT NEW YORK NY 126 06-19 1157P EST
PMS HONORABLE MARVIN E FRANKEL, JR
UNITED STATES DISTRICT COURT FOLEY SQUARE
NEW YORK NY 10007
IN RE ERROR VERSUS NEWS ET AL #71CIV1211

WE HAD BEEN SHOCKED TO JUST DISCOVERED THAT OUR ADVERSARY ROY COHN
WHOM WE HAD SOUGHT TO DISQUALIFY, HAD COMMUNICATED WITH YOU BY
LETTER (JUNE 2 1975) FOR THE SUPREME RELIEF FOR SUMMARY JUDGEMENT
FOR HIS CLIENT ANCORP AND WITHOUT BENEFIT OF ANY COPY TO US

THIS APPARENTLY WAS RECEIVED BY CHAMBER WITH NEITHER REJECTION
REBUKE NOR NOTICE TO US

BP-1201 (R4-69)



Telegram

A NOTICE OF MOTION FOR VACATUR OF THAT SUMMARY JUDGEMENT TO ROY COHN
AND THE OTHERS WAS SERVED ON THEM JUNE 18 1975 RETURNABLE JULY 3
1975 WITHOUT OUR KNOWLEDGE OF SUCH COHN JUNE 2 LETTER

IN SAID NOTICE OF MOTION WE HAVE REQUESTED YOUR REPLACEMENT
ROBERT W FARRELL ATTORNEY FOR PLAINTIFF

NNNN

AFFIDAVIT OF MARK D. GERAGHTY IN OPPOSITION TO MOTION DATED
JUNE 17, 1975

89sa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

"For Referral to Judge
Marvin E. Frankel"

DAILY MIRROR, INC.,

2

71 Civ. 1211

Plaintiff, :

- against -

2

AFFIDAVIT IN OPPOSITION
TO PLAINTIFF'S MOTION
DATED JUNE 17, 1975

NEW YORK NEWS INC., et al.,

⋮

Defendants. :

STATE OF NEW YORK)

;

SS. :

COUNTY OF NEW YORK)

MARK D. GERAGHTY, being duly sworn, ^{DCS}~~deposes and says:~~

1. I am an attorney duly admitted to practice before the courts of the State of New York and this Court and I am a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for defendant New York News Inc. in the within action. I make this affidavit in opposition to plaintiff's motion brought on by notice of motion dated June 17, 1975.

2. On June 18, 1975 we received the above-described notice of motion together with a supporting affidavit and a further application to this Court requesting it to recuse itself. The Court disposed of the application to recuse itself by order dated June 24, 1975.

3. We have now received further affidavits filed by plaintiff in support of its motion dated June 17, 1975 seeking,

on unspecified grounds, an order vacating (a) the order of this Court dated June 9, 1975 granting summary judgment to defendants and (b) the judgment subsequently entered thereon.

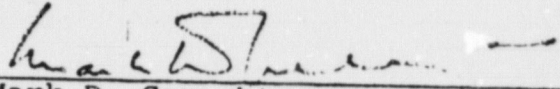
4. The affidavits filed by Mr. Farrell and Philip S. Budin in support of the motion are filled with conjecture, misstatements of fact, heresay, vicious personal attacks and claims of "gangster" association which might well be actionable, if made outside this action. They are empty of any facts which either (a) support any effort on plaintiff's part to vacate this Court's order and the judgment entered thereon, whether viewed as a motion to vacate a default judgment, a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure or a motion to vacate the order and judgment because of prejudice on the part of the Court or (b) suffice as a response to defendants motion for summary judgment which could have defeated that motion.

5. From his submissions, it is obvious that Mr. Farrell does not understand the law governing motions for summary judgment, is not familiar with and does not have a working knowledge of the Federal Rules of Civil Procedure and is either unwilling or incapable of engaging in litigation in conformity to the high standards that exist in this District.

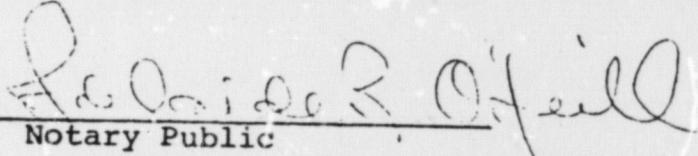
6. This latest submission is, in itself, strong evidence that plaintiff never had a valid claim and that its chief executive officer and attorney of record has never had any support for plaintiff's preposterous claims of conspiracy other than the product of his own imagination.

7. Plaintiff's latest motion, on whatever grounds it is based, should be denied in every respect.

Dated: New York, New York
July 2, 1975


Mark D. Geraghty

Sworn to before me this
2nd day of July, 1975


Notary Public

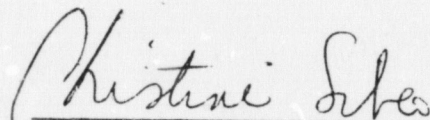
ADELAIDE R. O'NEILL
NOTARY PUBLIC, State of New York
No. 03-8221185
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF SERVICE BY MAIL


92sa

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Christine Sibeo, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 7609-17th Avenue, Brooklyn, New York. That on the 2nd day of July, 1975 deponent served the within AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION DATED JUNE 17, 1975 upon Robert W. Farrell, 67 Park Avenue, New York, New York, attorney for plaintiff in this action, Barret W. Kreisberg, Esq., 104 East 40th Street, New York, New York 10016, the attorney for defendant Henry Garfinkle and Saxe, Bacon, Bolan & Manley, 39 East 68th Street, New York, New York, the attorneys for defendants Union News Company, American News Company and Ancorp Inc. said addresses being those designated by said attorneys for that purpose by depositing true copies of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


Christine Sibeo

Sworn to before me this
2nd day of July, 1975


Notary Public

ADELAIDE R. O'NEILL
NOTARY PUBLIC, State of New York
No. 03-8221185
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

MEMORANDUM AND ORDER OF HONORABLE MARVIN E. FRANKEL
DATED JULY 3, 1975 and FILED JULY 7, 1975

93sa

U.S. DISTRICT COURT

JUL 7 12 49 PM '75

S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DAILY MIRROR INC. :
Plaintiff :
-against- : 71 CI 1211
NEW YORK NEWS INC., et al., : MEMORANDUM
Defendants. : AND
----- x #42737

FRANKEL, D.J.

Plaintiff's motion filed June 30, 1975,
and made returnable today seeks, "before a properly
assigned Judge . . . or such other as may be assigned
for the hearing hereof, . . . an Order vacating
ab initio the . . . Decision-Memorandum [dated June 9,
1975], and any Judgment entered thereon or to be
entered thereon, as an extra-judicial act, a legal
anomaly, a nullity in law, an abortive attempt of the
Judge to effect a single, joint and concurrent
disposition of two incompatible judicial processes,
one in personal recusance of the deciding Judge, and
the other in adjudication of the pending case, and as
surprise product of undue haste and a denial of due
process and for such other and further relief, by
way of reinstatement of a time schedule for the further

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JUL 07 1975

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prosecution and defense of the within case, and otherwise
as may be fitting in the premises."

The motion is denied.

It is so ordered.

Dated, New York, New York

July 3, 1975

Martin S. Frankel
U.S.D.J.

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RESTRAINING ORDER IN MATTER OF ANCORP NATIONAL SERVICES (RYAN,
J.) DATED MARCH 20, 1973

(Omitted here but printed at P. 11sa)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DILY MIRROR, INC.
Plaintiff- Appellant

- against -

NEW YORK NEWS, INC. et al
Defendants- Appellees

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York

That on the 10th day of November 1975 **see attached**

deponent served the annexed *Supplemental Appendix* upon
see attached

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 10th
day of November 1975

Robert T. Brin

Victor Ortega

VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 3 3950
Qualified in New York County
Commission Expires March 30, 1977

BARRETT G. KREISBERG

104 East 40th Street

New York, N. Y. 10016

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39 East 68th Street

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220 East 42nd Street

New York, N. Y. 10017

(212) 682-4567